

**REPORTABLE** (48)

(1) MOVEMENT FOR DEMOCRATIC CHANGE (2) NELSON  
CHAMISA (3) MORGAN KOMICHI  
v  
(1) ELIAS MASHAVIRA (2) ELIAS MUDZURI (3) THOKOZANI  
KHUPE (4) DOUGLAS MWONZORA

**SUPREME COURT OF ZIMBABWE  
GARWE JA, PATEL JA & GUVAVA JA  
HARARE, OCTOBER 17 & 18 & 23, 2019 & 31 MARCH 31, 2020**

*T. Mpofu and S. M. Hashiti*, for the appellants

*A. Mutungura and S. Tatsanga*, for the first respondent

*R. Zimudzi*, for the second respondent

*L. Madhuku*, for the third respondent

*J. Kadoko*, for the fourth respondent

**PATEL JA:** This is an appeal against the entire judgment of the High Court, sitting at Harare, handed down on 8 May 2019, in which the following order was granted:

1. The appointment of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as Deputy Presidents of the Movement for Democratic Change party were unconstitutional therefore null and void.
2. The appointments of the 2<sup>nd</sup> respondent as Acting President, and President of the Movement for Democratic Change party were unconstitutional and therefore null and void.

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3. All appointments and/or reassignments and actions of the 2<sup>nd</sup> respondent in his purported capacities as Deputy/Acting or incumbent President were unconstitutional and therefore null and void.
4. The 1<sup>st</sup> respondent be and is hereby ordered to hold an Extra-Ordinary Congress after the lapse of at least one month after the date of this Order.
5. The respondents are ordered to pay the applicant's costs of suit, jointly and severally, the one paying the others to be absolved.

### The Background

The first appellant is the Movement for Democratic Change, a political party which has capacity to sue and be sued in its own name ("the Party"). The remaining protagonists are members of the Party who were cited as follows in the court *a quo*. The second appellant is the President of the Party, while the third appellant is its National Chairman. The first respondent, who was the applicant *a quo*, is the Organising Secretary for the Gokwe Sesame District. The second respondent is the Deputy President, the third respondent is the Acting President and the fourth respondent is the Secretary General of the Party.

The facts relating to this matter are as follows. On 15 July 2016, the second appellant and the second respondent were appointed Deputy Presidents of the Party by the founding President, the late Dr Morgan Richard Tsvangirai. At the time these appointments were made, the post of Deputy President was occupied by the third respondent, having been elected as such at the Party's Congress held in October 2014. Following the death of Dr Tsvangirai on 14 February 2018, a special National Council meeting was convened on 15 February 2018, whereat the second appellant was confirmed as the Acting President of the Party.



On 24 September 2018, the first respondent launched an application in the High Court challenging the validity of the President's appointment of the second appellant and second respondents as Deputy Presidents of the Party. He averred that such appointments were made *ultra vires* the Party's constitution as they were not done *via* an election by Congress. The first respondent argued that the meeting of 15 February 2018 was a non-event as the National Council did not have powers to ordain an Acting President or a President of the Party. He further emphasised that Article 9.21.1 of Party's constitution was clear that upon the death of the President, the Deputy President assumed the role of Acting President. As such, he argued that the third respondent, as the duly elected Deputy President of the Party, became Acting President upon the death of Dr Tsvangirai, and was obliged to call for an Extra-Ordinary Congress within a year.

The third appellant opposed the application and deposed to an affidavit on behalf of the first and second appellants as well as the second and fourth respondents. He took four preliminary objections to the application. Firstly, he contended that the first respondent did not have *locus standi* to represent the first appellant as he had not produced a solemn declaration reflecting proof of acceptance of his membership of the Party. Secondly, he stated that the first respondent's delay in raising his complaints was inordinate and would cause prejudice as many developments had occurred since the appointments under challenge. Further, he claimed that the first respondent had waived his rights to challenge the appointments. Thirdly, he argued that the first respondent ought to have exhausted internal remedies provided in the Party's constitution by noting an appeal to its

appeal's tribunal. Lastly, the third appellant contended that the order directing the first appellant to hold an Extra-Ordinary Congress was incompetent relief in an application for a *declaratur*.

Regarding the merits of the application, the third appellant disputed the validity of the constitution relied on by the first respondent. He submitted that the "true constitution" was attached to the late President's opposing affidavit in the case of *Patson Murimoga & Anor v Morgan Richard Tsvangirai & Ors* HC 7453/16. The third appellant also argued that the appointments by the late President were made in terms of Article 9 of the constitution which gave the President power to appoint deputies to "officers of Congress" on the instructions of the National Executive and the National Council. It was submitted that the appointments were made on the instructions of the National Council and ratified by the same in terms of Article 18 of the Party's constitution. The third appellant further submitted that the subsequent occupation by the second appellant of the office of Acting President was valid as it was the result of unanimous assent and was based on the second appellant's valid election as Deputy President.

In his replying affidavit, the first respondent challenged the validity of the third appellant's opposing affidavit. He stated that, in the absence of a mandate from the other parties, the third appellant could not depose to solemn facts on their behalf. Further, he contended that the third appellant had not shown that he was authorised to represent the Party. Lastly, the first respondent took the position that the first appellant, together with

the second, third and fourth respondents, were barred for having failed to file their opposition to the application.

Determination of the Court *A Quo*

On the preliminary objections raised by the parties, the court *a quo* made the following rulings. It held that the first appellant was barred for having failed to file an opposing affidavit, as the third appellant who purported to act on its behalf had failed to show proof of his authority. The court also held that the second and fourth respondents were barred for having failed to file their own opposing papers, while the third respondent was barred for having failed to oppose the application. In relation to the first respondent's *locus standi* to institute the proceedings, the court held that his membership card was sufficient proof of his membership of the Party. Regarding the issue of exhaustion of internal remedies, the court *a quo* reflected that the relief sought by the first respondent would not be competently granted by the Party's appeals tribunal. The court reasoned that it was more probable that the appeal would not be heard in an impartial manner due to the composition of the appeals tribunal. On the issue of waiver of the first respondent's right to challenge the appointments, the court found that the first respondent had timeously approached the court after he became aware of his rights through a legal opinion furnished to the Party.

On the merits of the application, the court held that the appointments of the second appellant and second respondent as Deputy Presidents of the Party, having bypassed the electoral process, were *ultra vires* the Party's constitution. The court reasoned that the



constitution clearly provided that a Deputy President could only hold office by virtue of an election by Congress. This position was fortified by the court's interpretation of several provisions of the Party's constitution. The court considered the provisions of Article 6.4.4, which relate to the composition of the National Standing Committee. In particular, Article 6.4.4.1 was clear that a member could only occupy the office of Deputy President pursuant to an election at Congress. The late President had acted contrary to this provision by "picking" the second appellant and the second respondent as Deputy Presidents.

The court also had regard to Article 9 of the constitution which provides for the functions of various office bearers, including Deputy Presidents. In particular, Article 9.14 stipulates that all office bearers hold office by virtue of winning an election in Congress in terms of Article 6.4.4. The court highlighted that the President's powers of appointment in terms of Article 9.1.4 had to be exercised "where such is provided for in the Constitution." Thus, the President could only appoint the Secretary for Elections in terms of Article 6.4.4(k). The court further indicated that Article 9 listed office bearers and the Deputy President in the singular. In light of this, the court reasoned that the mention of Deputy Presidents in the plural was a typographical error.

The court further considered the powers of the National Council, in terms of Article 18 of the constitution, to cure an oversight or omission in the appointment of office bearers. The court held that the contention that the National Council had delegated to the late President the power to make the contested appointments was not supported by the evidence. The oversight or omission sought to be cured was not identified in the papers

pertaining to the deliberations of the National Council in 2016. Accordingly, Article 18 could not aid the appellants' case. Neither the President nor the National Council could bypass the requirement of holding an election at a Congress to fill those offices that were already provided for under the constitution.

Additionally, the court took the view that the Party was founded on constitutionalism and social democracy as *per* Article 3.1. Thus, the imposition of Deputy Presidents by the late President and the imposition of the second appellant as Acting President, acting in concert with the National Council at its meeting on 15 February 2018, was contrary to those founding values.

In light of these considerations, the court *a quo* held that the contested appointments were unconstitutional and granted the order aforementioned. Consequently, the court applied the provisions of Article 9.2.1(b) of the constitution, in terms of which the Deputy President becomes the Acting President, where the President is unable for any reason to perform his or her powers, functions, or administrative duties. The court accordingly concluded that at the time of the late Dr Tsvangirai's death, the third respondent was the Deputy President and ought to have assumed presidential duties, pending the holding of an Extra-Ordinary Congress to elect a new President, in terms of Article 9.21.1 of the constitution.



### Grounds of Appeal

There are numerous grounds of appeal herein, some of which are repetitive or should have been conjoined. They are reproduced *verbatim* as follows:

1. The court *a quo* erred in coming to the conclusion that first appellant was barred for failing to file an opposing affidavit and so erred in treating a valid affidavit deposed to by third appellant as *pro non scripto* and in proceeding to determine the matter without hearing the first appellant.
2. *A fortiori*, the court *a quo* erred in proceeding in a manner which is in violation of first appellant's constitutionally protected right to be heard before an independent and impartial court as envisaged by section 69(2) of the Constitution of Zimbabwe, 2013.
3. Having found that the constitution relied upon by the appellants at least contemplated the appointment of deputy presidents, the court *a quo* misdirected itself in concluding without hearing evidence on this material issue, that the reference to deputy presidents in that constitution was a typographical error.
4. *A fortiori*, the court *a quo* erred in writing a constitution for the first appellant and in irregularly bringing it under the authority of such a document.
5. The court *a quo* erred in not concluding that the appointment of deputy presidents in the first appellant was in accordance with the constitution of that party, had been mandated by congress and the highest decision making organ outside congress and was for all purposes valid as a unanimous decision of a voluntary association.
6. Having been addressed on the law governing voluntary organisations and its effect on the subject before it, the court *a quo* misdirected itself in not pronouncing itself on that issue and in not deciding a question which was material to the decision required of it.
7. The question of the proper constitution for the first appellant having been previously resolved in terms of an extant judgment in a matter which involved the same parties and or at least their privies, the court *a quo* erred in allowing that issue to be re-opened and in founding its judgment on a constitution which is foreign to the first appellant.
8. The court *a quo* erred in treating without a valid legal or factual basis the domestic remedies set out under first appellant's constitution as ineffectual and in not requiring, in accordance with superior court authority, the exhaustion of those remedies *ante* the bringing of the matter to court.
9. The court *a quo* misdirected itself such misdirection amounting to an error in law in not finding that first respondent's participation in the activities of the first appellant under the leadership of the second appellant and duration of same estopped him from contending against the validity of his appointment to the prejudice of the first appellant.
10. The ordinary congress for the first appellant having become due, the court *a quo* erred in finagling upon that party an extra ordinary congress and so erred in creating a totally untenable position which is at variance with first appellant's constitution and is totally unworkable either in fact and or in law.
11. The court *a quo* erred in intervening without a valid legal or factual basis in the workings of a voluntary association and in subordinating its statutes and unanimous assent to the whims of a dishonestly disgruntled individual.



Procedural Issues

At the initial hearing of this matter Mr *Mpofu*, lead counsel for the appellants, complained that the appeal record was incomplete. The appellants had therefore filed an application in the High Court, in Case No. HC 8183/79, for the rectification of the record. This was because there were some essential documents that were missing, in particular, Dr Tsvangirai's opposing affidavit in *Murimoga & Anor v Tsvangirai & Ors* HC 7453/16, and Annexure A1 which was attached to that affidavit. Annexure A1, according to Mr *Mpofu*, was the authentic constitution of the Party. Given that these documents were necessary for this appeal, there was need to conclude the application for rectification before proceeding with the appeal.

Apart from this procedural aspect, Mr *Mpofu* noted that the second and fourth respondents (Messrs Mudzuri and Mwonzora) had not participated in the proceedings *a quo* and were only cited herein because they had been cited in those proceedings. He then withdrew the appeal against both these respondents with a tender of costs on the ordinary scale. As regards the third respondent (Ms Khupe), she too did not actively participate in the proceedings *a quo* and has resisted this appeal on purely technical grounds. Consequently, the appeal against the third respondent should also be withdrawn with a tender of costs on the ordinary scale. This would leave the first respondent (Mr Mashavira) as the only opposing party herein.

Messrs *Zimudzi* and *Kadoko*, counsel for the second and fourth respondents respectively, noted that their clients were only concerned with the question of costs claimed

against them in the draft order. Accordingly, they both accepted the withdrawal of the appeal in respect of their clients and the tender of costs.

Mr *Mutungura*, counsel for the first respondent, submitted that there was no need for the record to be rectified. This was because the Court itself had pre-empted this issue by having directed the production of the supposedly missing documents. These were identical to those contained in the record. He agreed with the Court that the record in Case No. HC 7354/16 be examined by all counsel to verify the correct position.

Counsel for the third respondent, Mr *Madhuku*, also agreed that all counsel should examine the record at the High Court to verify the correctness of the documents before the Court. However, he was opposed to the withdrawal of the appeal against his client who had a clear interest in the matter. In particular, she had an interest in defending the judgment *a quo* and, therefore, a right to participate in these proceedings. He submitted that once the matter was set down for hearing, the appellants could not unilaterally withdraw the appeal against the third respondent who was now entitled to pursue a judgment in her favour.

In reply, Mr *Mpofu* persisted with the argument that the third respondent had no right to any judgment because she was not involved in the proceedings *a quo*. In any event, he agreed with other counsel that the record in the High Court be inspected to ascertain the correctness of the documents availed by this Court.

Following argument by counsel, the matter was stood down to the end of the roll on the following day. The Court further directed all counsel present to proceed to the Registrar of the High Court to verify the authenticity of the questioned documents before the Court. The following day, Mr *Hashiti* for the appellants, advised the Court that the record in Case No. HC 7453/16 had been inspected. He confirmed that the affidavit of Dr Tsvangirai and the Party constitution attached thereto were the same as those before the Court. All other counsel concurred and duly confirmed this position.

#### Ruling on Withdrawal of Appeal

Having considered submissions by counsel, the Court was of the view that leave for the withdrawal of the appeal against the third respondent should be refused. Whilst it was clear that she was not directly entitled to insist on a judgment following withdrawal, it was however clear that she had a direct and substantial interest in the outcome of these proceedings. Case authority was agreed that this Court had a discretion whether or not to grant leave for the withdrawal of any appeal. In the particular circumstances of this appeal, therefore, the request for leave to withdraw the appeal against the third respondent was refused.

As regards the second and fourth respondents, no issues arose. The withdrawal of the appeal and tender of costs had been accepted by them.

In the result, the Court made the following order:

“(a) The application for leave to withdraw the appeal against the second and fourth respondents is granted with costs.



(b) The application for leave to withdraw the appeal against the third respondent is refused with no order as to costs.”

### Preliminary Objections

In their heads of argument, the first and third respondents raised certain preliminary objections in terms of r 51 of the Rules of this Court. The first was that the first appellant, the Party, was not properly before this Court in that, having been found to be not properly before the court *a quo*, it remained barred and could not be an appellant *in casu*. The second objection was that the appellants had failed to comply with r 37(2) in that they did not serve the notice of appeal on the second, third and fourth respondents. The third and final objection was that the appellants had failed to file their heads of argument, as required by r 52, and consequently this appeal must be regarded as having been abandoned and deemed to be dismissed in terms of r 53.

At the hearing of the appeal, Messrs *Mutungura* and *Madhuku* indicated that the first and third respondents did not wish to persist with their objections *in limine*. Instead, they wished to argue and deal with the merits of the matter. Mr *Mpofu* retorted that the preliminary objections should be dismissed with costs to be borne by the respondents. Costs have been incurred by the appellants separately from the main appeal in filing their submissions to resist the preliminary objections raised by the respondents. The respondents have now retreated from their objections because of those submissions. The points *in limine* should not have been taken in the first place.

It is not in dispute that the appellants did not file any heads of argument when first called upon to do so by the Registrar. They did not seek or obtain any condonation for that failure and only filed their substantive heads of argument, following the directions of this Court, after the hearing of the matter had already commenced. Given this background, the Court is inclined to accept the submissions by counsel for the respondents that their non-persistence with the preliminary objections was proffered, not because the objections lacked merit, but in the spirit of making progress and avoiding purely procedural technicalities. In any event, the first point *in limine* taken by the respondents relates indirectly to the first ground of appeal challenging the conclusion of the court *a quo* that the first appellant was barred for failing to file an opposing affidavit.

All in all, I take the view that the first and third respondents have quite properly withdrawn their preliminary objections so as to enable this matter to proceed to its substantive merits. It is accordingly ordered that those objections shall be regarded as having been withdrawn, rather than dismissed, with each party bearing its own costs.

#### Issues for Determination

Before commencing his submissions, Mr *Mpofu* indicated that he was abandoning the tenth ground of appeal which avers that the court *a quo* had “finagled” upon the Party an Extra-Ordinary Congress which was at variance with the Party’s constitution. In my view, he should also have been forthright in abandoning the related seventh ground of appeal which impugns the court *a quo* for having founded its judgment on a constitution which was “foreign” to the first appellant. Clearly, this latter ground

simply cannot be sustained given the position eventually accepted and confirmed by his co-counsel that the document availed by the Court, which was identical to that contained in the appeal record as well as that attached to Dr Tsvangirai's opposing affidavit in Case No. HC 7453/16, is the only true and authentic constitution of the Party for present purposes. It is that very document which was also relied upon by the court *a quo* in formulating its judgment. It follows that the seventh ground of appeal must also be jettisoned. It is accordingly ordered that both the seventh and the tenth grounds of appeal be struck out.

I now turn to the remaining nine grounds of appeal. As I have already intimated, some of the grounds of appeal ought to be combined so as to rationalise their disposition. On that basis, I consider the following to be the salient issues for determination *in casu*:

- Whether the first appellant was correctly barred *a quo* and consequently denied the right to be heard.
- Whether the first respondent should have exhausted the domestic remedies afforded by the Party constitution before instituting the application *a quo*.
- Whether the first respondent was estopped from challenging the validity of the second respondent's appointment as the leader of the Party.
- Whether the reference to Deputy Presidents (in the plural) in the Party constitution was a mere typographical error.
- Whether the appointment of the second appellant and the second respondent as Deputy Presidents of the Party and the subsequent appointment of the second appellant as its Acting President were valid as being in accordance with the Party constitution.



- Whether there was any valid legal or factual basis for the court *a quo* to intervene in the workings of the Party as a voluntary organisation.

#### Status of First Appellant *A Quo*

In his opposing affidavit *a quo* the third appellant (Mr Komichi) declares that he is “the National Chairman of the [first appellant] by whom I am duly authorised to depose to this affidavit in my capacity as National Chairman”. The court *a quo* found that the first appellant was barred for having failed to file its own opposing affidavit and that the third appellant, who purported to act on its behalf, had failed to demonstrate his authority to do so.

Mr *Mpofu* submits that Mr Komichi’s affidavit clearly speaks to the status and *locus standi* of the Party and that there was no need for him to have been authorised for that purpose. The judgment *a quo* materially affected the rights and interests of the Party to its prejudice and it should therefore have been afforded the right to be heard. In any event, the first respondent could not drag the Party to court and then claim that it had no *locus standi*. Furthermore, even if the Party were to be held to be in default *a quo*, it is entitled to appeal against the judgment *a quo* given that it was final and definitive in its effect *vis a vis* the Party.

Mr *Mutungura* counters that no person claiming to act on behalf of another can do so without authority. A body corporate being an artificial person, cannot act by itself and any person claiming to act on its behalf must be clothed with authority to do so. In the instant case, Article 6.6.1 (j) of the Party constitution allows its National Executive

Committee to institute and defend legal proceedings against the Party. It was therefore necessary for that Committee to appoint Mr Komichi to act on behalf of the Party.

Mr *Madhuku* supports this position and further submits that the holding of executive office did not entitle Mr Komichi to depose on behalf of the Party. In any event, the Party was fully heard *a quo* through the third appellant's averments and submissions.

I note first and foremost that the cases relied upon by counsel for the respondents, *i.e.* *Crown & Anor v Energy Resources Africa Construction* SC 3/17 and *Madzivire & Ors v Zvirivadza & Anor* 2006 (1) ZLR 514 (S), were both concerned with corporate bodies as opposed to voluntary organisations. In the latter instance, particularly where a political party bedevilled by a leadership wrangle is involved, it may be necessary to adopt a less rigid approach to questions of *locus standi* and authority to depose. The principal mischief that is to be guarded against is to avoid the situation where the organisation in question is litigated for by an unauthorised person without its specific sanction. As is reasoned by Herbstein and Van Winsen: *The Civil Practice of the Superior Courts in South Africa* (3<sup>rd</sup> ed.) at p. 304:

“Any person who can swear positively to the facts will be sufficient and no special authority to him or her by the Plaintiff is necessary for the affidavit to be effective.”

The difficulty *in casu*, however, is that Mr Komichi's opposing affidavit is somewhat laconic and lacking in particularity as to the specific mechanism by which he was authorised by the Party to depose to his affidavit. It is not evident whether this was by

resolution of the National Executive Committee or by some other committee or functionary within the Party. Nor does Mr Komichi affirm that he can swear positively to the facts deposed to in his affidavit.

Be that as it may, I do not think that it is necessary for present purposes to determine this particular aspect of the appeal. As is conceded by Mr *Mpofu*, the second and third appellants were represented and heard through the same counsel that represented the first appellant. Given this context, his belated prayer that the matter be remitted to the court *a quo* to hear the first appellant would entail nothing less than an exercise in judicial futility. I agree with Mr *Madhuku* that the first appellant was adequately represented in the proceedings *a quo* and, despite having been non-suited, was afforded the right to be heard. Insofar as concerns the present appeal, there can be no doubt that the first appellant has had more than ample opportunity to be very ably represented and fully heard in the proceedings before us. All in all, I take the view that the first ground of appeal is entirely otiose and need not detain this Court any further.

#### Exhaustion of Domestic Remedies and Estoppel

The general rule is that an aggrieved member of any voluntary organisation must first exhaust internal or domestic remedies before approaching the courts. The adequacy of such domestic remedies is a question of fact that must be established by evidence.



Mr *Mpofu* submits that no material was placed before the court *a quo* to enable it to reject the availability or adequacy of domestic remedies. The Party constitution sets out effectual structures for internal complaints to be addressed through the Appeals Tribunal under Article 14. The composition of the Tribunal is clearly objective and impartial and there can be no question of any predetermined hearing or decision.

As regards the question of estoppel, Mr *Mpofu* contends, quite correctly, that quiescence usually amounts to acquiescence. Many developments have taken place within the Party since the second appellant was appointed as Deputy President and later as Acting President and, more recently, as the Party President. The first respondent allowed this position to continue and only reacted to challenge that position several years later.

In terms of Article 14.3 of the Party constitution, the Appeals Tribunal consists of the Tribunal President, who must be at least forty years of age and a trained and qualified lawyer of at least seven years experience, together with eight other individual members of the Party. Additionally, all the members are elected by Congress for five years and no member of the National Council is eligible for appointment as a member of the Tribunal.

Having regard to these provisions, I have no doubt that the experience and credentials of the Tribunal's membership are impressive, no doubt minimising the possibility of bias or predisposition. Nevertheless, I am inclined to agree with the sentiments and findings of the court *a quo* rejecting the viability of the domestic grievance procedure for the situation *in casu*. Although the individual members of the Tribunal might

well have been persons other than the respondents *a quo*, the factual reality on the ground was that the second and third appellants herein were effectively in charge of the Party leadership and hierarchy. Following the special meeting of the National Council held on 15 February 2018, at which meeting the first appellant was reaffirmed without demurrer as the Acting President, there can be no doubt that he was the apparently unopposed and chosen leader of the Party. Given this scenario, there is little to indicate that the court *a quo* misdirected itself in holding that the first respondent could not and would not have found any comfort in pursuing the internal remedy theoretically availed under Article 14 of the Party constitution. There was no point in invoking domestic remedies that had been both politically and practically undermined. See *Moyo v Forestry Commission* 1996 (1) ZLR 173 (H) at 192; *Cargo Carriers (Pvt) Ltd v Zambezi & Ors* 1996 (1) ZLR 613 (S) at 618. In short, there is nothing to show that the court *a quo* improperly exercised its discretion in the particular context of this case.

As regards the estoppel argument, I am again disinclined to interfere with the findings and decision of the court *a quo*. The learned judge found that the first respondent came to realise his right to challenge the Party leadership after he had read a legal opinion rendered by senior counsel, on the instructions of the Party, when a dispute arose between the three Deputy Presidents. Based on this finding, I agree with the learned judge that it cannot necessarily be inferred that the first respondent was aware of and acquiesced by his conduct to the appointment of two additional Deputy Presidents in 2016. He only became aware of the relevant constitutional legalities in 2018 and acted within a reasonable time to mount the application *a quo* in September 2018.

In the premises, I take the view that the eighth and ninth grounds of appeal are devoid of merit and legally unsustainable. They are accordingly dismissed.

#### Singular or Plural Deputy Presidents

The court *a quo*, after scrutinising the Party constitution, determined that it only provided for the existence of a single Deputy President and that the references to Deputy Presidents in the plural were purely typographical errors. There are at least three clauses in the constitution that indicate the possibility of more than one Deputy President. The first is Article 6.4.4.1 which relates to the composition of the National Standing Committee. Article 6.4.4.1(b) explicitly refers to “the Deputy Presidents” as office bearers of that Committee. The same applies to the composition of the National Executive Committee. In terms of Article 6.5.3(a), this Committee comprises, *inter alios*, “President and Deputy Presidents”. The third more obliquely relevant provision is Article 9.1.4 which empowers the President to “appoint deputies to offices of Congress”.

Mr *Mpofu* submits that the court *a quo* clearly erred in this respect. It could not, without hearing or receiving evidence from the draftsman or the rectification of the relevant provisions, come to the conclusion that the references to Deputy Presidents were nothing more than typographical errors. This was not simply a question of interpretation and the court was duty bound to enforce the constitution as it is in the absence of clear evidence or rectification.



Mr *Madhuku* relies on other provisions of the Party constitution, viz. Articles 9.2, 9.3.1(a), 9.21.1 and 10.16.1(a), which support the view that only one Deputy President of the Party is envisaged. These are all substantive provisions and they all provide for the exercise of powers and functions by a single Deputy President. To interpret the constitution to provide for more than one Deputy President would lead to absurdity and impracticability as to which Deputy President should perform which particular function. Additionally, the constitution only provides for the election of one Deputy President. There is no need for any evidence to prove that the references to Deputy Presidents were clearly typographical errors. It is in essence a question of interpretation and therefore a question of law rather than fact.

A closer consideration of the provisions relied upon by Mr *Madhuku* demonstrates that he is absolutely correct. Article 9.2.1 delineates the duties of “the Deputy President”, including acting on behalf of the President in his absence and carrying out such functions as may be assigned to him by the National Council. Article 9.3.1(a) spells out the duty of the National Chairman to perform the duties of the President’s office in the event that “both the President and the Deputy President” are unable to perform the functions of that office. Article 9.21.1 is a crucial provision which I shall revert to later. It stipulates that, in the event of the death or resignation of the President, “the Deputy President” assumes the role of “Acting President”. It clearly does not contemplate the confusing and conflicting possibility of several Deputy Presidents assuming the pivotal and singular role of Acting President. Lastly, there is Article 10.16 which provides for the establishment of

an Advocacy Committee. Article 10.16.1(a) assigns the specific function of chairing that Committee to “the Deputy President”.

In light of the aforesaid provisions, it is reasonably clear that the Party constitution, read holistically, postulates the appointment and tenure in office of only one Deputy President at any given time. I acknowledge that it might be somewhat churlish to totally disregard the two provisions alluded to earlier which appear to suggest the existence of more than one Deputy President. In the final analysis, however, I take the view that these two provisions, but only to the extent that they refer to more than one Deputy President, are patently incongruous and incompatible with the overall structure and tenor of the Party constitution. Taken literally, they would lead to the glaring absurdities that I have already adverted to, stultifying the effective and fluid operation of the Party as a viable political organisation. To conclude on this aspect, I am satisfied that the third and fourth grounds of appeal cannot be upheld and must accordingly be dismissed.

#### Validity of Appointments to Presidency

The essential crux of this appeal is whether or not the appointment of the second appellant as Deputy President and then as Acting President was in conformity with the Party constitution. The second appellant and the second respondent were appointed as Deputy Presidents on 15 July 2016 by the President, Dr Tsvangirai. Thereafter, at the special National Council meeting held on 15 February 2018, the second appellant was confirmed as the Acting President of the Party. In my view, the entire appeal hinges on the critical question as to the validity of these appointments under the Party constitution.

As regards the first appointment, the opposing affidavit of Dr Tsvangirai, in Case No. HC 7453/16, sets out his perspective on the matter. According to that affidavit, both the National Executive Committee and the National Council, at their meetings held on 14 July 2016, directed that he should exercise his prerogative in appointing additional Deputy Presidents. He proceeded to do so the following day. Subsequently, on 3 August 2016, the National Council, with an overwhelming majority, endorsed the appointment of the second appellant and the second respondent to the positions of Deputy Presidents.

Mr *Mpofu* supports this position by placing reliance on Article 9.1.2(f) as read with Article 18 of the Party constitution. He submits that any omission in the constitution relating to the appointment or election of office bearers is to be resolved by the National Council in terms of Article 18. *In casu*, the decision of the National Council reflected the unanimous position of the Party and, once that decision was ratified by unanimous assent, it became the decision of the Party itself. Mr *Mpofu* buttresses his argument by reference to Articles 6.4.4.1(b) and 6.5.3(a), which refer to “Deputy Presidents”, as well as Article 9.1.4, in terms of which the President is allowed to “appoint deputies to officers of Congress”. Thus, the President can appoint additional Deputy Presidents on his own prerogative following a recommendation from the National Council. By virtue of Articles 6.4.1 and 6.4.2.1(a), the National Council is “the Party’s main policy implementing organ” and has the power to “implement the decisions and resolutions of the Congress”. The powers of the National Council under Article 6.4.2.1 are not exhaustive “but without prejudice to the generality of its powers”. It operates as the highest decision making body



outside Congress and is effectively Congress outside Congress. It can make key decisions in relation to structural omissions in the constitution, which decisions can then be ratified through unanimous assent by Congress.

Mr *Mutungura* submits that the President and the National Council cannot authorise the appointment of any one or more Deputy Presidents. He, she or they must be elected by the Congress. As regards Article 9.1.4, this provision only allows the President to appoint deputies to officers of Congress and other office bearers where this is provided for in the constitution, for instance, in terms of Article 6.4.4.1(k), which allows the President to appoint the Secretary for Elections.

Mr *Madhuku* endorses the position that Article 9.1.4 must be confined to appointments in respect of which the constitution specifically so provides, as in the case of the Secretary for Elections. He further submits that the powers of the Deputy President under Article 9.2 are critical and it would be strange that the President would have the power to appoint the Deputy President. He or she is a possible or potential President and his or her appointment should not be totally dependent on the President. With reference to Article 18, this provision relates to omissions and oversights and not to the filling of the position of Deputy President where that position is already occupied by virtue of an election.

It is necessary in the first instance to place the relevant provisions of the Party constitution in their proper perspective. Article 6 sets out the organs of the Party and

elaborates their respective functions, powers and duties. Article 6.1 enumerates the upper echelons of the Party hierarchy in order of precedence, namely, the Congress, the National Conference, the National Council, the National Executive Committee and the National Standing Committee. Article 9 is titled “Office Bearers, National Council & Their Election Procedures”. However, although all the office bearers and their respective functions are particularised, I am unable to discern any specific provision, whether in Article 9 or elsewhere in the constitution, that is germane to the election procedures applicable to the appointment of office bearers of the Party. Having outlined this broad framework, I turn to consider the salient provisions regulating the powers of the President and the National Council *vis-à-vis* the appointment of office bearers.

Article 6.4.2.1 spells out the powers of the National Council which, as I have already indicated, are “without prejudice to the generality of its powers” as being “the Party’s main policy implementing organ”. By virtue of Article 6.4.2.1(k), it is empowered “to fill any vacancy, by way of an election, in the National Council caused through resignation, death or any other cause” (my emphasis). According to Article 6.4.3(a), the National Council comprises, *inter alios*, “all members of the National Standing Committee” which, in terms of Article 6.4.4.1, is composed of “the following office bearers elected by Congress” (my emphasis), including the President and the Deputy President.

My reading of these provisions is that the National Council is vested with the power to fill any vacancy within its ranks, arising from any cause whatsoever, but only by way of an election. However, it is not clear precisely how any such election is to be

conducted. In any event, that process of filling any vacancy by election, presumably through a meeting of the National Council itself, only extends and applies to members other than those office bearers who comprise the National Standing Committee, including the President and the Deputy President, who must be elected by Congress and not by any other Party organ.

Turning to the powers of appointment specifically vested in the President, these are to be found in Article 9.1.4 as read with Articles 6.4.4.1(k) and 6.5.2(b). In terms of Article 9.1.4, the President “shall appoint deputies to officers of Congress ..... and other office bearers where such is provided for in this Constitution” (my emphasis).

The first point to note about the latter provision is that it appears to be designed to enable the President to appoint deputies to officers of Congress, other than himself, given that his deputy is already an officer of Congress. Secondly, and more significantly, his power to appoint deputies to officers of Congress and other office bearers is explicitly confined to those instances where this is specifically provided for in the constitution.

One such instance is stipulated in Article 6.4.4.1(k) with respect to the Secretary for Elections “who shall be appointed by the President”. Another instance is that referred to in Article 6.5.2(c) which provides that the National Executive Committee shall be composed of, *inter alios*, “the twenty members appointed by the President provided that the President may appoint up to twenty five members with the approval of two thirds majority of the National Council”. Apart from these two situations, there may well be other



instances where the President is expressly authorised to make appointments in terms of the constitution. What is critical in all of these cases is that the President's power to so appoint must be specifically conferred by the constitution.

The next question to consider is the scope of the power, if any, exercisable by the President, acting in conjunction with the National Council, to make appointments within the Party hierarchy. The provision that is assiduously relied upon by the appellants in this regard is Article 18. It is necessary to set it out in full:

“In any place [*sic*] where the requirements of this Constitution cannot be satisfied because of an omission or oversight in draughtsmanship, or because a body provided for has not been established, or an officer provided for in this Constitution has not been elected or appointed, or because of a procedural problem; the National Council shall have the power to make such arrangements which, in their opinion, satisfy the spirit of this Constitution and shall seek approval for such arrangements at the next Congress.” (My emphasis)

Also to be considered in tandem with this provision is Article 9.1.2(f) relative to the duties of the President:

“It shall be the duty of the President: ..... (f) to perform such other functions and duties and exercise such powers as may be assigned to him or her in terms of this Constitution by the National Council.” (My emphasis)

As I read these provisions, there are two principal obstacles that the appellants cannot surmount in their endeavour to apply them to the appointment of two additional Deputy Presidents by Dr Tsvangirai. First and foremost, in light of my earlier conclusion that the Party constitution only contemplates a single Deputy President, and given that the third respondent was already in occupation of that office, it cannot be said that an officer

provided for in the constitution had not been elected or appointed. In short, there was no *casus omissus* or *lacuna* in the constitution that needed to be cured or rectified. Secondly, whatever arrangements that the National Council might conceive or devise to obviate the omission or oversight in draughtsmanship, if any, and whatever power that the Council may assign to the President for that purpose, both the exercise of such power and such arrangements must satisfy the spirit of the constitution, albeit in the opinion of the Council.

As I have already emphasised, Article 6.4.4.1 makes it unquestionably clear that the incumbent of the office of Deputy President must be elected by Congress. Furthermore, as was aptly observed by the court *a quo*, Article 3.1 of the constitution enshrines the “core values” of the MDC as “a Social Democratic Party” with “humble and obedient leadership and accountability”. To my mind, the appointment of supernumerary functionaries, by executive dictat and in violation of the prescribed elective process, simply cannot be countenanced as having satisfied the social democratic spirit of the Party constitution. It follows that the appointment of the second appellant and the second respondent as additional Deputy Presidents were patently unconstitutional and quite correctly nullified by the court *a quo*.

I now turn to the appointment of the second appellant as the Acting President of the Party on 15 February 2018. As already stated, this appointment was effectuated at a special meeting of the National Council. The meeting was convened through the normal channels before the death of Dr Tsvangirai on 14 February 2018. According to Mr *Mpofu*, the meeting was neither convened nor chaired by the second appellant. It was chaired by

the third appellant, as the National Chairman, in accordance with Article 9.3.1(h) of the constitution. The meeting was not orchestrated or controlled by the second appellant. Mr *Mpofu* further submits that, in the situation where the President dies, the National Council can determine which Deputy President should become the Acting President. The meeting was convened before the death of Dr Tsvangirai and the question of who should be the Acting President was already a contentious issue. The agenda of the meeting had not been altered and the question of cohesion within the Party was relevant.

A perusal of the minutes of the special meeting shows that the meeting was indeed opened by the third appellant who, at that time, was the Deputy National Chairman. However, the minutes also reveal that the second appellant was listed as “Acting President Chairing” and delivered a report as “the Acting President”. In any event, the National Council unanimously reaffirmed and appointed the second appellant as the current incumbent Acting President of the Party for the next twelve months.

To my mind, the questions as to who convened or chaired the special meeting and for what specific objective are not of any particular relevance for present purposes. The critical issue *in casu* is whether or not the second appellant was validly appointed or reaffirmed as the Acting President of the Party. The answer to that question can only be in the negative for the following reasons.

Firstly, as I have already determined, the second appellant was not constitutionally appointed as an additional Deputy President. Consequently, he could not



at any stage validly assume the mantle of Acting President. Secondly, and equally significantly, immediately following the death of Dr Tsvangirai, Article 9.21.1 of the constitution came into play. It provides that:

“In the event of the death or resignation of the President, the Deputy President assumes the role of Acting President, pending the holding of an Extra-Ordinary Congress that shall be held to elect a new President which Extra-Ordinary Congress to be [*sic*] held no later than a year from the death or resignation of the former President.”

The import of this provision is clear and unambiguous. Its effect *in casu* is that upon the demise of Dr Tsvangirai, on 14 February 2018, the third respondent, as the only lawfully elected Deputy President, became the Acting President of the Party pending the holding of an Extra-Ordinary Congress to elect a new President. No other Party member, of whatever rank or position, could validly step in to assume the office of Acting President. Only the third respondent could lawfully wear that laurel.

It follows from the foregoing that the second appellant was not lawfully “appointed” or “reaffirmed” as the Acting President of the Party. The conclusion of the court *a quo* in this respect was eminently unimpeachable. It also follows that the fourth ground of appeal is devoid of merit and must be dismissed.

#### Intervention in Workings of First Appellant

The gravamen of the sixth and eleventh grounds of appeal is that the court *a quo* erred in ignoring the law governing voluntary organisations and thereby erred in intervening without a valid legal or factual basis in the workings of a voluntary association.

Mr *Mpofu*'s position in this regard is that, unless there are exceptional circumstances, the courts should not interfere in the affairs of voluntary organisations, especially political parties.

I cannot but agree with the proposition that the courts should ordinarily be astute not to trample upon the consensually crafted articles of governance adopted by voluntary organisations. In other words, they should be loath to intervene in the workings and affairs of a voluntary association. Nevertheless, as is quite correctly accepted by Mr *Mpofu*, such interference may be warranted and justified in exceptional circumstances. Such circumstances were clearly identified by the learned judge *a quo*. She aptly noted that the ethos of the Party was predicated on the foundation of social democracy. She then proceeded to observe that the anointing of additional Deputy Presidents in 2016 by the late President and the subsequent imposition of the second appellant as the Acting President on 15 February 2018 contradicted the democratic intention behind the selection of leadership within the Party. To use her own words:

“Those actions were acts of disenfranchisement, not only of the applicant, who was not invited to participate, but potentially the first respondent's membership who have been deprived an election. Succession by choice is not *intra vires* the first respondent's Constitution.”

I can do no better than to echo the above sentiments and I fully endorse the exercise of the court *a quo*'s discretion in interfering with the parlous affairs of the Party in the circumstances before the court. I am amply satisfied that the sixth and eleventh grounds of appeal are entirely unmeritorious and therefore cannot be upheld.

Mootness of the Matter

This matter was heard *a quo* on 14 March 2019 and judgment therein was handed down on 8 May 2019. Soon thereafter, in June 2019, the Party convened a Congress at which elections were held and officials were elected to lead the Party. More significantly, the second appellant was elected as the President of the Party. The question that then arises is whether or not this matter has been overtaken by events and thereby rendered moot.

Mr *Mutungura* accepts that the third respondent may have moved on. He contends, however, that she is still part and parcel of the Party. Furthermore, it was not MDC-T but MDC-A that elected the second appellant as its President. Therefore, the issues *in casu* are not moot.

Mr *Madhuku* denies that the third appellant has moved on. There are now two groups calling themselves MDC-T and there is therefore a leadership wrangle that must be resolved. In any case, what happened on 15 February 2018 was a blatant illegality and the failure to comply with the Party constitution is fatal. It is therefore necessary for the Party to have a properly convened Extra-Ordinary Congress to appoint a new President. Mr *Madhuku* further submits that this Court must act on the basis of the facts before it and cannot rely on questions of practicability or possible political outcomes. The law must be fully complied with and the Court does not have sufficient material before it to find mootness or otherwise.



Mr *Mpofu* points to the averments contained in the first respondent's founding affidavit *a quo* which indicate that the third respondent purported to hold her own Congress in April 2018 and is now leading her own party. The third appellant's opposing affidavit *a quo* also avers that the third respondent is no longer a member of the Party having decided to form her new party. These are undisputed averments and allegations of fact. The third respondent cannot possibly seek any relief from this Court. The judgment *a quo* has been overtaken by lawful election processes conducted by the Party at its Congress held in June 2019. The present matter is therefore clearly moot.

The principles governing mootness are relatively well established. The first is that a court may decline to exercise its jurisdiction over a matter because of the occurrence of events outside the record which terminate the controversy between the parties. Thus, if the dispute becomes academic by reason of changed circumstances, the case becomes moot and the jurisdiction of the court is no longer sustainable – *Khupe & Anor v Parliament of Zimbabwe & Ors* CCZ 20/19, at p. 7. To put it differently, the controversy must be existing or live and not purely hypothetical – *Koko v Eskom Holdings Soc Limited* [2018] ZALCJHB 76, at para 21; *National Coalition for Gay and Lesbian Equality & Ors v Minister of Home Affairs* 2000 (2) SA 1 (CC), at para 21 (footnote 18).

The second principle is that mootness does not constitute an absolute bar to the justiciability of the matter. The court retains its discretion to hear a moot case where it is in the interests of justice to do so – *Khupe's case, supra*, at p.13; *J.T. Publishing (Pty) Ltd v Minister of Safety and Security* 1997 (3) SA 514 (CC), at 525A-B. This may arise where

the court's determination will have some practical effect, either on the parties concerned or on others, and the nature and extent of such practical effect, or because of the importance or complexity of the issues involved – *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC), at para 11. In short, the court may exercise its discretion to hear a moot issue by reason of its significance, practical or otherwise, and the need for an authoritative determination on that issue in the interests of justice.

It thus becomes necessary *in casu* to answer to interlinking questions: has the present matter been overtaken by events and thereby rendered moot; and, if so, should this Court nevertheless render its definitive determination in the matter in the interests of justice. It is at this juncture that I am confronted by what I perceive to be the ineluctable exigencies of *realpolitik*.

The evidence on record, as elaborated by submissions from counsel, suggests that the third respondent may have moved on to other political pastures. However, there is no clear evidence to the effect that she has unequivocally relinquished her political rights and interests in the Party. On the other hand, it seems relatively clear that the second appellant has become “the chosen leader” of the Party. The Court cannot but take judicial notice of the following political realities. Firstly, as appears from the voting results of the last general election held in July 2018, the second appellant was the only viable opposition contender for the presidency. He actually garnered 44.39% of the total valid votes cast in the presidential election, as compared with the winning candidate, the incumbent President of the country, who obtained 50.67% of the votes cast. In contrast, the next highest ranking

candidate, being the third respondent, only secured a paltry 0.94% of the valid votes cast. Secondly, and equally significantly, he was unanimously elected as the President of the Party, *i.e.* the one that is presently before this Court, at its Congress convened in June 2019. These are the inescapable facts that loom large on the country's political landscape.

What this factual conspectus brings to the fore is the concept of *de facto* and effective control as expounded in the renowned case of *Madzimbamuto v Lardner-Burke N.O. & Anor N.O.; Baron v Ayre N.O. & Ors N.N.O.* 1968 (2) SA 284 (RAD). This case revolved around the legitimacy of the Rhodesian Government and its enactments after it had usurped governmental authority following the infamous Unilateral Declaration of Independence on 11 November 1965.

Beadle CJ took the position that the status of the Government was that of a fully *de facto* government as one that was in effective control of the territory and that this control seemed likely to continue. However, it was not yet so firmly established as to justify a finding that its status was that of a *de jure* government. Quenet JP took a firmer position and held that the Government was not only the country's *de facto* government but had also acquired internal *de jure* status. Macdonald JA echoed that position and took the view that the Government was the government "for the time being" within the state of Rhodesia and therefore a *de facto* government within the meaning of English constitutional law. Consequently, insofar as a municipal court is concerned, a *de facto* government is a *de jure* government in the sense that it is the only law-making and law-enforcing government functioning "for the time being" within the state. Jarvis AJA also found that the



Government had effective control of the territory and that this control seemed likely to continue.

The only judge to take a firm dissenting position was Fieldsend AJA. He held that, while the authorities were factually in control of all executive and legislative powers in Rhodesia, they had not usurped the judicial function. Accordingly, they were neither a *de facto* nor a *de jure* government. However, necessity provided a basis for the acceptance as valid of certain acts of the authorities. This was so provided that the administrative or legislative act in question was directed to and reasonably required for the ordinary orderly running of the country, that the rights of citizens under the lawful 1961 Constitution were not defeated, and that there was no public policy consideration which precluded the court from upholding the act.

The judgment of the Appellate Division was taken on appeal to the Privy Council in *Madzimbamuto v Lardner-Burke & Anor* [1969] 1 AC 645. Lord Reed, writing for the majority, opined that the conceptions of international law as to *de facto* and *de jure* status were inappropriate where a court sitting in a particular territory had to decide on the validity or otherwise of a new regime which had gained control of that territory. Accordingly, the usurping government in control of Southern Rhodesia could not, for any purpose, be regarded as a lawful government. As regards necessity and the need to preserve law and order within the territory controlled by the usurper, no such principle could override the legal right of the United Kingdom to make such laws as it deemed proper for territories under the Queen's sovereignty. Thus, no purported law made by any person or

body in Southern Rhodesia, no matter how necessary such law might be for preserving law and order or otherwise, could have any legal effect whatsoever. Consequently, the emergency regulations, made by the Officer administering the Government in Rhodesia, were void and of no effect. The determination of the Appellate Division was therefore erroneous and the order under which the appellant's husband was detained was invalid.

Lord Pearce delivered a dissenting judgment affirming the views of Fieldsend AJA, based on the principle of necessity or implied mandate from the lawful sovereign. The court *a quo* was enjoined to accord recognition to certain of the acts, orders and legislation of the illegal regime because chaos would result if provisions made by the illegal regime for the lawful needs of the territory were to be disregarded. A reasonable margin of common sense was to be applied to the factual situation existing in Southern Rhodesia and it was not necessary to treat all the acts or legislation of the illegal regime as invalid for any purpose at all. Accordingly, the doctrine of necessity or implied mandate applied and the appeal should be dismissed.

In the event, the Privy Council, by a majority of four to one, reversed the decision of the Appellate Division. Consequently, the Queen was to be advised to declare that the determination of the court *a quo*, with regard to the validity of the Emergency Powers Regulations made in Southern Rhodesia since 11 November 1965, was erroneous and that such regulations had no legal validity, force or effect.

I fully appreciate that the principles enunciated by the Appellate Division and the Privy Council in the *Madzimbamuto* case derive from conceptions applicable to sovereignty and legitimacy in the realms of constitutional law and international law. Nevertheless, I take the view that these principles are equally relevant and germane to the factual situation *in casu*. Their application will assist the Court in evaluating the mootness or otherwise of the present matter and in determining the position that the Court should adopt in the event that the matter is found to be moot.

As I have already intimated, the Court is constrained to take judicial notice of the prevailing political realities within the Party that is presently before us. There can be no doubt that the second appellant and his lieutenants are in *de facto* and effective control of the Party. There is nothing to suggest that the situation will not continue for some time or that the second appellant is likely to be eclipsed and supplanted as the leader of the Party in the foreseeable future. While the Court cannot with any accuracy predict the future political path of the Party, we certainly cannot totally disregard the political realities on the ground.

In the premises, I am inclined to agree with the appellants that the present matter has indeed been rendered moot and academic. That, however, is not the end of the matter. The question that then arises is whether or not the Court should nevertheless proceed to deliver its definitive pronouncement pursuant to my earlier determination of the substantive merits of this appeal.



It is common cause that the Party is the main opposition political entity in this country, having secured 88 out of 270 seats in the National Assembly and 25 out of 60 seats in the Senate, at the last general election held in July 2018. It is not inconceivable, given the vagaries and vicissitudes of political fortune, that it might someday be electorally elevated to become the ruling party in Zimbabwe. As I have noted earlier, Article 3 of the Party constitution enshrines its status as “a Social Democratic Party whose core values shall be solidarity, justice, equality, liberty, freedom, transparency, humble and obedient leadership and accountability”. These core values of the Party, if they are not to be reduced to merely hollow rhetoric, necessarily implicate the principles of good governance and adherence to the leadership requirements embodied in the constitution.

The analysis of the relevant provisions of the constitution that I have articulated in addressing the grounds of appeal makes it abundantly clear that the second appellant’s ascent to the helm of the Party was fundamentally flawed by gross constitutional irregularities. To perpetuate that situation without appropriate correction would not only undermine the ethos and dictates of the constitution but would also infringe the rights of all the Party’s members to a constitutionally elected leadership. It would further operate to violate the founding values enunciated in s 3(1) of the National Constitution, to wit, the rule of law and its concomitant doctrine of legality as well as the principles of good governance.

In the final analysis, I take the view that the corrective intervention of this Court in the affairs of the Party is a matter of significant public importance, not only in relation

to the Party and its members but also as regards the governance of political parties generally. It is necessary that the Court should deliver its definitive pronouncement on the legitimacy of the second appellant's ascent to the presidency of the Party. It is further necessary to ensure that the leadership of the Party is constitutionally and lawfully ensconced. The imbroglio that the Party's leadership has become entangled in may well be water under the bridge. But it is a bridge that, for the sake of the Party's stature and credibility, needs to be correctly and systematically constructed. In short, notwithstanding the political mootness of this matter, it is imperative that there should be an authoritative determination of this appeal in the interests of justice.

#### Disposition

The essence and objective of the corrective measures to be implemented by the Party is to restore the *status quo ante* that prevailed before the irregular and unlawful appointments to the Party presidency took place. This would necessitate having to extend the time limit prescribed in the Party constitution *apropos* the convening of an Extra-Ordinary Congress to elect a new President following the demise of Dr Tsvangirai. It would also involve modifying the judgment *a quo* to conform with that purpose.

In terms of Article 9.21.1 of the Party constitution, the Deputy President assumes the role of Acting President upon the death of the President, pending the holding of an Extra-Ordinary Congress to elect a new President. Such Congress must be held no later than one year from the death of the former President. The power to convene an Extra-Ordinary Congress is ordinarily vested in the President by dint of Article 9.1.2.1. It follows

that, by assuming the role of Acting President, the Deputy President is *ipso jure* equally empowered to convene any such Congress. By the same token, the National Chairperson, who is enjoined by Article 9.3.1(a) to perform the duties of the President's Office in the event that both the President and the Deputy President are unable to perform their functions, must also be vested with the power to convene an Extra-Ordinary Congress.

As regards costs, there can be no doubt that this matter is of great public importance. Moreover, it was necessary that the issues raised herein be fully ventilated and satisfactorily resolved in the interests of all the parties affected. In these circumstances, it seems to me that the Court's discretion on costs should be exercised so as to depart from the general rule that costs should follow the cause. I accordingly deem it just and proper that there should be no order as to costs in respect of this appeal as well as the proceedings *a quo*.

It is accordingly ordered as follows:

1. The appeal be and is hereby dismissed with no order as to costs.
2. The judgment of the court *a quo* be and is hereby confirmed, save for the deletion of paragraphs 4 and 5 of the operative order.
3. The third respondent, in her capacity as the Acting President of the first appellant, be and is hereby ordered to convene an Extra-Ordinary Congress, within a period of three months from the date of this order, in order to elect a new President.



4. In the event that the third respondent fails or is unable to comply with paragraph 3 above, the third appellant, in his capacity as the National Chairperson of the first appellant, be and is hereby ordered to convene the aforesaid Extra-Ordinary Congress, within a period of four months from the date of this order.

**GARWE JA** : I agree

**GUVAVA JA** : I agree

*Atherstone & Cooke*, appellants' legal practitioners

*Mutungura & Partners*, 1<sup>st</sup> respondent's legal practitioners

*Zimudzi & Associates*, 2<sup>nd</sup> respondent's legal practitioners

*Lovemore Madhuku Lawyers*, 3<sup>rd</sup> respondent's legal practitioners

*Mwonzora & Associates*, 4<sup>th</sup> respondent's legal practitioners

## **CONSTITUTION OF THE MOVEMENT FOR DEMOCRATIC CHANGE**

As approved by the Inaugural Congress of the MDC held at Chitungwiza in January 2000 and amended and adopted at the Second Congress at the City Sports Centre-Harare on the 18<sup>th</sup> of March 2006 and amended and adopted at the Third Congress at Barbourfields Stadium, Bulawayo on April 30 2011 and amended and adopted at the 4<sup>th</sup> Congress of the Party at the City Sports Centre Harare from 31<sup>st</sup> of October to the 1<sup>st</sup> of November 2014

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## **CONSTITUTION FOR THE MOVEMENT FOR DEMOCRATIC CHANGE (MDC)**

### **PREAMBLE**

*Whereas* from the 26th to the 28th February 1999, delegates representing various Working Peoples' Organisations led and organised by the Zimbabwe Congress of Trade Unions met at a Convention, in Harare, to discuss various issues of concern regarding Zimbabwe;

*And whereas* the Convention unanimously noted the failure and inability of the present Zimbabwean Government to govern Zimbabwe justly, transparently, honestly, fairly and equitably;

*And whereas* the said Convention identified and raised serious concerns and expressed unhappiness at the manner Zimbabwe has been governed;

In particular, the Convention noted:

- a) The inability of the economy to address the basic needs of most Zimbabweans, the disempowerment of the people, breach of the rule of law through state sponsored violence and abuse of human rights, and in particular, the genocide perpetrated in Matabeleland and Midlands Provinces;
- b) The severe decline in incomes, employment, health, food, security and well-being of people, the unfair burden borne by working women and the persistence of gender discrimination in practice;
- c) The decline and, in some cases, total collapse of public services;
- d) The lack of progress in resolving land hunger and rural investment needs;
- e) The weak growth in industry and marginalisation of the vast majority of the nation's entrepreneurs;
- f) The absence of a national Constitution framed by and for the people, the persistence of regionalism, racism and other divisions undermining national integration;
- g) Wide - spread corruption and lack of public accountability in political and economic institutions;

*And whereas* the Convention noted the need and desire for forming a political movement that would seek to address the broad concerns of the Convention;

*And whereas* subsequent to the Convention it was established through wide consultations throughout Zimbabwe that there is an overwhelming desire for the

formation of a broad - based political party;

*And whereas* a political Party known as the *Movement for Democratic Change* dedicated to the promotion and advancement of human rights and to setting up of a government based on the principles of freedom and good governance, was launched at Rufaro Stadium on the 11th of September 1999;

*And whereas* the inaugural Congress of the Movement for Democratic Change was held at Chitungwiza on the 29<sup>th</sup> of January 2000 and it was resolved to adopt a Constitution; and

*Now therefore* the Movement for Democratic Change adopts the following Constitution as amended.

## **ARTICLE 1**

### **NAME, SYMBOL AND HEADQUARTERS OF THE PARTY**

1.1 The name of the political Party shall be the Movement for Democratic Change (hereinafter referred to as “MDC” or where appropriate “Party”).

1.2 The Party’s symbol is an open palm with its borders in black on a white background encircled by the Party’s slogan “Chinja maitiro” “Guqula Izenzo” written in black. The Party’s logo is a black circle incorporating the Zimbabwe bird in grey on an orange background which represents a wheel on which is also embedded the Party’s flag in black, red, yellow and green blocks arranged in bands.

1.3 The Party’s flag is rectangular. It is one and half times longer than it is wide. It is a horizontal multi-colour, comprising from top to bottom equal bands of green, yellow, red and black. At the centre of the flag is the Party symbol in its original colours with the words “MDC” written in white on the black band of the flag.

1.4 The Party is headquartered at Harvest House, No.44 Nelson Mandela Avenue, Harare and shall have offices at such other places as may be determined from time to time by the National Council.

## **ARTICLE 2**

### **LEGAL STATUS**

**2.1.** The MDC shall be a body corporate with perpetual succession, capable of suing and being sued and acquiring and disposing of property in its own name.

**2.2** The MDC shall have the power to do everything necessary or conducive to the furtherance of its aims, values and objectives.

## **ARTICLE 3**

### **AIMS, VALUES AND OBJECTIVES**

**3.1** The MDC shall be a Social Democratic Party whose core values shall be solidarity, justice, equality, liberty, freedom, transparency, humble and obedient leadership and accountability.

**3.2** The MDC shall pursue social liberation policies aimed at completing the unfinished business of the national liberation movement and in particular shall strive for the democratic structural economic liberation, empowerment and transformation of Zimbabwe.

**3.3** The MDC shall seek the mandate of the people to govern the country and work for:

- (a) A dynamic economy built on the principles of a mixed market economy with a strong social conscience;
- (b) An open democracy, in which national government is accountable to the people through the devolution of power and decision-making to the provinces and local institutions and structures;
- (c) A just society in which the weak and the poor are assured of a decent standard of living and equitable social services such as health and education and in which equal opportunities are available to all people;
- (d) A fair and equitable distribution of land;
- (e) Respect for the individual through provision and protection of fundamental human rights;
- (f) A sustainable environmental and natural resources policy in which the environment is protected and held in trust for future generations;
- (g) The eradication of all forms of corruption;
- (h) The eradication of all forms of discrimination including that on the basis of gender, sex, race, tribe, place of origin, and religion;
- (i) Respect for and recognition of cultural diversity within a united society built on the principle of national integration and eradication of negative cultural practices;
- (j) The equitable and fair distribution of Zimbabwe's national resources among regions; and
- (k) The equal representation of women in public office and within the Party.

**3.4** The MDC believes in the principle of active civic participation in public affairs and shall, in pursuit of this principle, work with trade unions, business and



employers' organisations, human rights organisations and other civic groups in the formulation of national policies.

**3.5** The MDC shall recognise the sovereign equality of all countries and shall promote progressive forms of international economic, social and political cooperation that advance national development goals.

**3.6** The MDC shall maintain the unity and integrity of Zimbabwe as a nation state and shall oppose any forms of tribalism and any attempt to divide the country on tribal or regional lines\*.

**3.7** The MDC shall form alliances with political organisations, or united or popular fronts and may join national or international organisations which share the same social democratic values with it\*.

*(\*Articles adopted at Second Congress)*

## **ARTICLE 4**

### **THE CHARACTER AND CULTURE OF THE MDC**

**4.1** The MDC is a pro-poor, people-centred social democratic, non-racial and non-sexist movement which firmly supports gender parity in all the organs of the party, engendering the 50:50 gender representation principle\*.

**4.2** The MDC, in its composition and functioning shall be inclusive, tolerant and is against any forms of discrimination including racial, sexual and tribal discrimination\*.

**4.3** The MDC is against all forms of violence and does not believe in the use of violence as a way or means of attaining any political, social, economic or religious objective\*.

**4.4** The MDC supports the emancipation of women, combats sexism and will ensure that the voice of women is fully heard in the organisation\*.

**4.5** The MDC considers democracy as a core value, to that extent, its policies are to be determined by its membership, and further, its leadership shall be accountable to the people as defined by this Constitution\*.

**4.6** The MDC firmly believes in freedom of speech, freedom of expression and further, the free circulation of ideas and information within the movement\*.

**4.7** The MDC recognises and respects the cultural, religious, racial and linguistic diversity of its members\*.

**4.8** The MDC recognises its roots in the Working People of Zimbabwe and in

particular recognises the role of the Zimbabwe Congress of Trade Unions, (ZCTU) National Constitutional Assembly (NCA), the Church, Women's and Student movements in its formation.

4.9 The MDC is against all forms of factionalism, rumour mongering, slander and character assassination.

*(\*Amendment adopted at Fourth Congress)*

*(\*Articles adopted at Second Congress)*

## **ARTICLE 5**

### **MEMBERSHIP**

#### **5.1 Individual Membership**

- (a) An application to become an individual member of the Party shall be submitted to a Branch Executive Committee or in its absence, to a Ward Executive Committee, on a membership application form to be completed by the applicant.
- (b) A Branch shall grant membership to an applicant but may, in its discretion and in appropriate circumstances issue an applicant with Provisional Membership.
- (c) Membership cards will be issued to registered members of the Movement and to persons whose application for membership has been accepted subject to the payment of the prescribed subscription.
- (d) On being accepted in the MDC a new member shall make a solemn declaration to the Movement in the form of Annexure A to this Constitution. Further, all members shall be bound by the Party's Real Change Code of Ethics incorporated in this Constitution.
- (e) Any applicant whose request for membership has been rejected shall reserve the right to appeal to the National Council, whose decision shall be final.

#### **5.2 Provisional Membership**

- (a) Any person wishing to re-join the Party after a lapse of time may be granted Provisional Membership only.
- (b) A Provisional Member may attend Branch meetings but is not eligible to hold any Party position or stand for election on any Party ticket.

- (c) Provisional Membership rights commence from the time the provisional membership card is issued to an applicant.
- (d) Provisional Membership shall not exceed a period of 12 months.

### **5.3 Associate Membership**

- (a) Trade Unions, sections or divisions of Unions that are not themselves Associate Members; professional associations, cooperative societies, churches and other civic organisations which subscribe to the Party's principles and objectives and accept this Constitution are eligible for Associate Membership of the Party.
- (b) Application for Associate Membership shall be made to the National Executive Committee through the Secretary General.
- (c) Associate members shall pay an annual fee and an Associate member who has not paid the prescribed membership fee by the fixed date shall not have standing in the Party.
- (d) The National Executive Committee may refuse to admit any applicant to Associate Membership and may cancel the Associate Membership of any Organisation which it considers;
  - (i). is not or is no longer eligible for Associate Membership; or
  - (ii). has objectives or activities that are injurious to the Party or inconsistent with its aims and objectives.
- (e) An organisation whose application for membership has been rejected may appeal to the National Council whose decision shall be final.
- (f) An Associate Member may appeal to the National Council against a decision to cancel its membership under this Article.

### **5.4 Obligations of Members**

Every member shall have the duty;

- (a) To accept and conform to the Constitution, policies, principles, rules and regulations of the Party;
- (b) To conduct oneself in a manner which is not prejudicial to the interests of the Party and in particular, to adhere to the Code of Conduct of the Party;
- (c) To pay regular subscriptions as determined from time to time by the National Council;



- (d) To promote and defend the aims, values, objectives, policies and principles of the Party;
- (e) To register as a voter, vote for and support the Party in any election;
- (f) To belong to and take an active part in the life of his or her Branch;
- (g) To take all necessary steps to understand the policies and programmes of the MDC;
- (h) To observe discipline, not engage in any forms of violence, to behave honestly and carry out loyal decisions of the Party;
- (i) To deepen one's understanding of the social, cultural, political and economic challenges of the country;
- (j) To fight against racism, tribalism, sexism, violence, religious and political intolerance or any other forms of discrimination or chauvinism; and
- (k) To fight for genuine democratic change in Zimbabwe, the rule of law, equal rights and justice.

## **5.5 Rights of Members**

5.5.1 Every individual member of the Party shall have the right, subject to the provisions of this Constitution:

- (a) To vote in any Party election;
- (b) To stand for and, if elected, hold any office in the Party subject to clause 5.5.2 below; and
- (c) To participate in all meetings and programmes of the Party, provided that the member holds a valid membership card and the member's name appears on the Party membership list.

\*5.5.2 A member shall have served the following periods before he or she is allowed to hold the following office;

- (a) Two years – before he or she is eligible to hold a position in the District.
- (b) Five years- before he or she is eligible to hold a position in the Province, National Executive and National Council.
- (c) Two years – before he or she is eligible to be elected as a Councillor.
- (d) Five years – before he or she is eligible to hold the position of Mayor, Chairperson on a Local Board or Member of Parliament.

5.6 Failure to uphold the duties in Article 5.4 of this Constitution may result in disciplinary action being taken against the member through the appropriate Disciplinary Committee.

5.7 Subject to this Constitution, an associate member of the Party shall have the

right to participate in all meetings and programmes of the Party but shall not have the right to vote.

5.8 An associate member shall not be represented in any meeting by a person who belongs to another political party.

5.9 There shall be a membership list which shall be confidential to the National Council which shall take all reasonable steps to ensure that all information contained on the membership list is used solely for Party purposes and is not disclosed to any person other than persons authorised by this Constitution or by the National Council.

*(\*Article adopted at Third Congress)*

#### **5.10 Membership Termination and Expulsion**

Membership of the Party shall be terminated if:

- (a) A member of the Party joins or supports a political party other than MDC (termination of membership in these circumstances shall be automatic); or
- (b) A member sends written notice of resignation to such address as may, from time to time, be specified for communications relating to the membership list; or
- (c) A member's subscription is three months out of time or in arrears and a Disciplinary Committee makes an order of termination (provided that membership shall be restored if the arrears are paid for the period to which the subscription is related) or
- (d) A member is expelled from membership of the Party in accordance with the provisions of this Constitution.

#### **5.11. A member may be expelled if:**

- (a) The National Council (by a two-thirds majority of all its members) is of the opinion that his or her continued membership would be seriously detrimental to the interests of the Party;

Provided that the member shall be notified in writing of the grounds on which the National Council is considering the termination of his or her membership and is given a fair opportunity to make representations in writing or in person to the National Council whereafter the National Council shall consider the member's written or oral comments and respond to them before making their decision; or

- (b) The Disciplinary Committee makes a ruling of expulsion in accordance with the provisions of this Constitution.

5.12 Any member who is expelled in terms of section 5.11(a) of this Constitution shall have a right of appeal to the Appeals Tribunal. Whilst waiting for the appeal to be heard, the member shall be on suspension.

5.13 All expulsions from the Party shall be endorsed by Congress.

## **ARTICLE 6**

### **ORGANS OF THE PARTY**

#### **6.1 The Party shall have the following organs:**

- (a) The Congress;
- (b) The National Conference;
- (c) The National Council;
- (d) The National Executive Committee;
- (e) The Guardian Council;
- (f) The National Assembly for Women;
- (g) The National Assembly for Youth;
- (h) The Disability Council
- (i) Party Parliamentary Caucus;
- (j) Local Government Caucus;
- (k) Provincial Consultative Forum;
- (l) The Province;
- (m) The District;
- (n) The ward; and
- (o) The branch.

#### **6.2 The Congress**

6.2.1 The Congress shall be the supreme organ of the Party and shall be composed as follows:

- (a) All members of the National Council;
- (b) All members of the National Executive of Women;
- (c) All members of the National Executive of Youth and 30 members of the Students' Council;
- (d) All members of the Provincial Executive Committees;
- (e) The Chairperson, Secretary, Organising Secretary and Treasurer from each



District Executive Committee;

- (f) The Chairperson, Secretary, Treasurer and Organising Secretary at Provincial and District levels of the National Assemblies of Women and Youth;
- (g) The Chairperson of each Ward Executive Committee; and
- (h) All the Party's Members of Parliament, Mayors and Chairpersons of local authorities.

6.2.2 The Congress shall meet once every five years, provided that an Extra-Ordinary Congress may be convened, at any time, in accordance with the provisions of this Constitution.

**6.2.3 The functions and Powers of Congress shall be:**

- (a) To formulate the policies and principles of the Party;
- (b) To supervise the implementation of policies, principles and programmes of the Party;
- (c) Subject to this Constitution, to elect members of the National Council;
- (d) To approve the audited financial statements of the Party and appoint or reappoint auditors;
- (e) To repeal or amend the Constitution;
- (f) To review, ratify, modify, alter or rescind any decision taken by any organ or official of the Party;
- (g) To condone any reasonable non-compliance with the time limits provided for in this Constitution, save for the time limits defined in Article 6.2.2; and
- (h) To dissolve the Party in terms of this Constitution.

6.2.4.1. A notice convening the Congress shall be sent to all Provinces and Districts by the Secretary General on the direction of the National Council at least 2 (two) months before the date of the Congress.

6.2.4.2. In addition, the notice convening the Congress shall be published once in a Newspaper of national circulation, thirty days before the Congress.

**6.2.5 An extra-ordinary Congress may be called:**

- (a) By a simple majority vote of the National Council or two thirds vote of the National Executive which vote shall be conducted by a secret ballot;
- (b) Upon the written request received from at least one-third of the members entitled to attend the Congress submitted to the Secretary-General; or

- (c) Upon the written request received from at least two-thirds of the Provincial Councils submitted to the Secretary-General.

6.2.6 A notice convening an Extra-Ordinary Congress shall be sent to all members entitled to attend and to each branch by the National Council at least one month before the date of the meeting.

6.2.7 The quorum of the Congress shall be two-thirds of the members entitled to attend, provided that if one hour after the stipulated time for commencement a quorum is not reached, the meeting will proceed subject to decisions thereat being approved by an Extra-Ordinary Congress called by the National Council within six months of the date of the inquorate Congress.

6.2.8 The interim Provincial Executive Committees shall have the power to call the Party's inaugural Congress.

### **6.3 National Conference**

6.3.1 There shall be a National Conference to be held annually between Congresses, save in the year that a Congress is held.

6.3.2 The National Conference shall be composed of:

- (a) The National Council;
- (b) All members of the Provincial Executive Committees;
- (c) All members of the National Executive of Women;
- (d) All members of the National Executive of Youth;
- (e) All the Party's Members of Parliament, mayors and chairpersons of local authorities; and
- (f) All members of the Guardians' Council.

\*6.3.3. The functions of the National Conference shall be to:

- (a) Review, debate and adopt all Party policies;
- (b) Receive reports by Party secretaries on national Party policies;
- (c) Review progress of Party programmes between Congresses; and
- (d) Do all things necessary of the furtherance of Party objectives.

*(\*Article amended at Third Congress)*

### **6.4 National Council**

6.4.1 The National Council shall be the Party's main policy implementing organ and shall have the authority to lead the organisation and execute the aims and objectives of the Party.

#### **6.4.2 The Powers of the National Council**

6.4.2.1 Without prejudice to the generality of its powers, the National Council shall:-

- (a) Implement the decisions and resolutions of the Congress;
- (b) Issue and send directives and instructions to and receive reports from the National Executive;
- (c) Supervise and direct the work of the Party and all its organs;
- (d) Oversee the work of the Women's Assembly and the Youth Assembly;
- (e) Receive reports, supervise the work of, and delegate such functions to the National Executive Committee as it considers necessary;
- (f) Issue documents and other policy directives as and when it deems fit;
- (g) Confer such honours as it may deem appropriate;
- (h) Where necessary, to suspend or dissolve any organ of the Party and to call and conduct new elections of that organ within four months from the date of any such dissolution, provided that a suspension shall not last for more than six months;
- (i) Rectify or reverse any decisions of the National Executive;
- (j) To elect, reappoint and reassign Party Secretaries defined in clause 6.5.3 of this Constitution save those that are directly elected at Congress;
- (k) To fill any vacancy, by way of an election, in the National Council caused through resignation, death or any other cause, provided that any vacancy in respect of Elected Provincial Representatives to the Executive defined in Article 6.5.2 shall be filled at an election of the Provincial Council; and
- (l) To monitor and evaluate the performance and execution of duties of all members of the National Executive and with the exception of the President remove any member of the National Executive provided that a two thirds majority decision made by a secret ballot of the National Council is required when it comes to the removal of a Deputy President, National Chairperson, Vice National Chairperson, Secretary General, Organising Secretary and Treasurer General.

6.4.2.2 In the event of any dispute in respect of the interpretation of this Constitution and in the event of any serious dispute or deadlock in the National Council over matters of procedure, then the matter shall be referred to Arbitration before the Appeals Tribunal set out below.



6.4.2.3 All decisions taken by the National Council on routine Party business shall be by a simple majority and in the event of an equality of votes the motion shall be lost.

6.4.2.4 All decisions taken by the National Council on strategic party business shall be by a two thirds majority vote of the members present in a meeting or by proxy.

6.4.2.5 The National Council shall meet at least twice a year and as and when required and one half plus one of its membership shall constitute a quorum.

6.4.2.6 An emergency National Council Meeting may be convened on the basis of a petition signed by at least one third of the members of the National Council provided that at all material times only the President or any person specifically delegated in writing by him or her shall have the right at any time of convening a meeting of the National Council\*.

*(\*Article amended at Fourth Congress)*

#### **6.4.3. Composition of the National Council**

The National Council shall be composed as follows;

- (a) All members of the National Standing Committee;
- (b) All Members of the National Executive Committee;
- (c) The Management Committee of the Assembly of Women;
- (d) The Management Committee of the Assembly of Youth;
- (e) Chairperson and Secretary of the Guardians' Council;
- (f) Chairperson, Secretary, Organising Secretary, Treasurer and Secretary for Information and Publicity of every Province;
- (g) Three Members of Parliament elected by Members of Parliament themselves in a special caucus meeting; and
- (h) the Chairperson and Secretary at Provincial level of the Assembly of Women and Youth.

#### **6.4.4. The National Standing Committee**

**6.4.4.1** The National Standing Committee shall compose of the following office bearers elected by Congress:

- (a) The President;
- (b) The Deputy Presidents;
- (c) The National Chairperson;
- (d) The Deputy National Chairperson;
- (e) The Secretary General;

- (f) The Treasurer General;
- (g) National Organising Secretary;
- (h) Secretary for Information and Publicity;
- (i) Chairperson of the Youth Assembly;
- (j) Chairperson of the Women's Assembly; and
- (k) The Secretary for Elections who shall be appointed by the President\*.

Provided that the Standing Committee may invite any Party Secretary to any of its meetings\*.

6.4.4.2 All members of the Standing Committee shall perform their duties under the supervision of the President\*.

6.4.4.3 The National Standing Committee shall be responsible for the day to day running of the Party and shall, as a subcommittee of the National Executive Committee, report to the National Executive Committee and shall make no policy decisions\*.

6.4.4.4. At its first meeting after Congress, which shall be held within one month from the date of Congress, the National Council guided by the recommendations of the National Standing Committee shall elect the Party Secretaries referred in Article 6.4.4.3 from amongst those members of the National Council that sit in the National Executive.

6.4.4.5 At this first meeting after Congress, the National Council on the recommendations of the National Standing Committee shall also co-opt not more than ten persons from the Party's General Membership who shall sit in both the National Executive Committee and the National Council, provided that the Members to be so co-opted shall be such that gender parity is as much as possible achieved in the composition of the National Executive Committee.

6.4.4.6 The National Council shall have the power of appointing any member of the National Executive Committee to any secretariat or policy position not specifically created in terms of this Constitution. Further the National Council shall have the power of appointing any deputy to any position or office where such does not exist and shall at any time create and fill any new Party Secretary position.

6.4.4.7 There shall be a Pool of National Executive Members consisting of three members elected or nominated and submitted by the Provincial Council of the province concerned through the Secretary General before the main Congress, provided that at least one of the three shall be a woman and at least one of them again shall have previous National Executive experience\*.

*(\*Article adopted at Fourth Congress)*

## **6.5 The National Executive Committee**

6.5.1 There shall be a National Executive Committee of the National Council, which shall exercise all the functions of the National Council in between meetings, provided that the National Executive Committee shall have no power to make any decision in conflict with a standing decision of the National Council.

6.5.2 The National Executive Committee shall be composed as follows;

- (a) All members of the National Standing Committee;
- (b) Three members elected and submitted by the Provincial Council of the Province concerned through the Secretary General before the main Congress, provided that at least one of the three shall be a woman and at least one of them shall have served in the previous Executive Committee\*; and
- (c) The twenty members appointed by the President provided that the President may appoint up to twenty five members with the approval of two thirds majority of the National Council.

6.5.3 The National Executive Committee shall be composed of the following office bearers and Secretaries:

- (a) President and Deputy Presidents;
- (b) The National Chairperson and The Deputy National Chairperson;
- (c) The Secretary General and the Deputy Secretary General;
- (d) The Treasurer General and the Deputy Treasurer General;
- (e) The Secretary for Information and Publicity and The Deputy Secretary for Information and Publicity;
- (f) The National Organising Secretary;
- (g) The Deputy National Organising Secretary;
- (h) The Secretary for Finance and Economic Affairs;
- (i) The Secretary for Education, Sports, Arts and Culture;
- (j) The Secretary for International Relations and International Cooperation;
- (k) The Secretary for Labour and Social Security;
- (l) The Secretary for Health and Child Welfare;
- (m) The Secretary for Lands and Agriculture;
- (n) The Secretary for National Healing, Reconciliation and Integration;
- (o) The Secretary for Defence and Security;
- (p) The Secretary for Welfare;
- (q) The Secretary for Industry and Commerce;



- (r) The Secretary for Transport;
- (s) The Chairperson and Secretary of the Youth Assembly;
- (t) The Chairperson and Secretary of the National Assembly of Women;
- (u) The Secretary for National Elections;
- (v) The Secretary for Research and Policy Coordination;
- (w) The Secretary for Constitutional and Parliamentary Affairs;
- (x) The Secretary for Justice and Legal Affairs;
- (y) The Secretary for Domestic Affairs;
- (z) The Secretary for Party Business, Investment and Projects;
- (aa) The Secretary for Tourism;
- (bb) The Secretary for Environment and Climate Change;
- (cc) The Secretary for Mines and Mineral Resources;
- (dd) The Secretary for Science and Technology Development;
- (ee) The Secretary for Information, Communication Technology Development;
- (ff) The Secretary for Water, Development and Management;
- (gg) The Secretary for Special Needs, People Living with Disabilities and the Disadvantaged;
- (hh) The Secretary for Local Government and Devolution;
- (ii) The Secretary for Energy and Power Development;
- (jj) The Chairperson, Secretary, Treasurer, Organizing Secretary and Information & publicity secretary of the Women's Assembly\*;
- (kk) The Chairperson, Secretary, Treasurer, Organizing Secretary and Information & publicity secretary of the Youth Assembly\*; and
- (ll) Secretary for Cadreship Development and Training\*.

## **6.6. Powers of the National Executive Committee**

6.6.1. The National Executive shall be the administrative and implementing authority of the Party and shall:

- (a) Implement the decisions and resolutions of the National Council;
- (b) Recommend party policies and programmes to the National Council;
- (c) Formulate and implement the current programmes of the party within the framework of party policy and ensure that provinces, districts, wards and branches and all other party structures such as parliamentary and local government caucuses carry out the decisions of the party;

- (d) Ensure that the provincial, district, ward and branch structures of the party function democratically and effectively;
- (e) Receive reports, supervise the work of, and delegate such functions to the Provincial Committees as it considers necessary;
- (f) Engage and dismiss employees of the Party;
- (g) Submit reports to the National Council;
- (h) Establish departments and set up committees as it considers appropriate;
- (i) Set up special Commissions of Inquiry or specialised committees that shall be appointed for specific purposes, which committees shall dissolve upon submission their final written reports thereon, unless reconstructed for further investigation or consideration in connection with the original task;
- (j) Institute legal proceedings for and defend any legal proceedings against the Party;
- (k) Open and operate books of accounts;
- (l) Maintain accurate registers of all the Party members and monitor, control and give guidance to all elected Party officers holding public positions; and
- (m) Receive monthly reports from Party Secretaries in connection with their portfolios.

6.6.2 The National Executive Committee shall meet at least once in two months and one half of its members shall constitute a quorum.

*(\*Article amended at Fourth Congress)*

## **6.7 The Guardians' Council**

6.7.1 There shall be a Guardians' Council consisting of 32 persons of which six members shall be appointed by the National Council on the advice of the National Standing Committee in its first meeting after Congress, which six shall occupy the positions of:

- (a) Chairperson, Deputy Chairperson, Secretary and committee members; and
- (b) A Province shall elect two members - one male and one female who shall sit in the National Executive of the Guardians' Council.

6.7.2 Members of the Guardians' Council shall be at least 55 years of age and shall have been members of the Party for a minimum 10 years.

### **6.7.3 Functions of Guardians' Council**

The functions of the Guardians' Council of are:

- (a) To offer advice and wisdom to the National leadership of the Party including the National Executive Committee and National Council;
- (b) To carry out advocacy work, with and amongst traditional leaders and traditional institutions for and on behalf of the Party;
- (c) To assist the Secretary for National Healing, Integration and Reconciliation in carrying out his/her work; and
- (d) To perform or carry out any such functions which the National Executive Council may from time to time delegate to it, which may include investigations, arbitration and reconciliation in disputes within the Party structures or among members.

## **6.8 The Province**

6.8.1 There shall be Thirteen Provinces of the Party; these shall be Manicaland, Mashonaland Central, Mashonaland East, Mashonaland West, Masvingo, Midlands, Matebeleland South, Matebeleland North, Bulawayo, Harare and South Africa, United Kingdom and United States of America External Assemblies. These provinces shall have equal rights, powers, privileges and obligations subject to this constitution\*.

*(\*Article adopted at Fourth Congress)*

### **6.9.1 The Provincial Executive**

6.9.1 The Provincial Executive Committee shall comprise of the following:-

- (a) The Chairperson and Deputy Chairperson;
- (b) The Secretary and Deputy Secretary;
- (c) The Treasurer;
- (d) The Organising Secretary and Deputy Organising Secretary;
- (e) The Secretary for Information and Publicity;
- (f) The Chairperson, Secretary, Treasurer, Organising Secretary and Secretary for Information and Publicity of the Provincial Women's Assembly;
- (g) The Chairperson, Secretary Treasurer, Organising Secretary and Secretary for Information and Publicity of the Provincial Assembly of Youth;
- (h) The Secretary for Defence and Security;
- (i) The Secretary for Local Government and Devolution;
- (j) The Secretary for Finance and Economic Affairs;



- (k) The Secretary for Education;
- (l) The Secretary for Land and Agriculture;
- (m) The Secretary for National Integration, Healing and Reconciliation;
- (n) The Secretary for Research and Policy;
- (o) The Provincial Secretary for Elections;
- (p) The Secretary for Legal Affairs;
- (q) The Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (r) The Secretary for Welfare;
- (s) The Secretary for Home Affairs;
- (t) The Secretary for Tourism and Environment;
- (u) The Secretary for Mines and Mineral Resources;
- (v) The Secretary for Sports and Culture;
- (w) The Secretary for Science and Technology;
- (x) The Secretary for Information Communication Technology;
- (y) The Secretary for Water, Development and Management;
- (z) The Secretary for Energy and Power Development;
- (aa) The Secretary for Health and Child Welfare;
- (bb) The Secretary for Projects; and
- (cc) Mayors and Chairpersons of Local Authorities.

6.9.1.2 The Provincial Executive Committee shall be obliged to set up the following Executive Committees:

- (a) The Finance and Administration Committee;
- (b) The Organising Committee;
- (c) The Elections Directorate; and
- (d) The Information and Publicity Committee.

The functions of the committee shall be subject to Article 10 *mutatis mutandis*.

6.9.1.3 The Provincial Executive Committee shall be elected at a Provincial Assembly meeting held once every five years provided that elections shall take place at least two months prior to each Congress.

**6.9.1.4 The main functions of the Provincial Executive Committee shall be:-**

- (a) To build the Party in the province;

- (b) To organise elections of District Executive Committees and where necessary to organise Ward and Branch elections;
- (c) To supervise the work of Branches in the province concerned and to ensure that Branches are functioning democratically, effectively and in compliance with this Constitution;
- (d) To implement policies and principles of the Party in the Province, subject to the National Council's supervision;
- (e) To carry out all such functions and duties as assigned by the National Council;
- (f) To maintain a Register of Party members in the Province;
- (g) To select, choose or nominate candidates for national elections for acceptance or rejection by the National Council;
- (h) To maintain bank accounts and books of accounts and keep an asset register of all Party assets in the Province; and
- (i) Subject to approval by the National Executive Committee, to suspend or dissolve a District, Ward or Branch Executive Committee provided that no such suspension shall last for more than three (3) months; provided further that the affected District, Ward or Branch shall have the right of appeal to the Appeals Tribunal against such a decision, within thirty (30) days of such decision being made. An appeal against suspension by the District, Ward or Branch shall have the effect of suspending the decision being appealed against.

6.9.1.5 Members of the Provincial Executive Committees shall be eligible for re-election.

6.9.1.6 At least one third of the Provincial Executive Committee members shall be women.

6.9.1.7 Should a vacancy occur in any Provincial Executive Committee by reason of death, resignation or expulsion, the Provincial Executive Committee will have the power of co-opting another member of the Party into the said Provincial Executive Committee and shall further have the power of appointing any of its members to any acting capacity provided that an election to fill the vacancy so created, shall be held at the next Provincial Council meeting.

6.9.1.8 The Provincial Executive shall meet at least once every month.

**6.9.1.9 The Provincial Administrative Committee**

There shall be a Provincial Administrative Committee of the Province which shall be Chaired by the Chairperson of the Province and whose other members shall be:

- (a) The Deputy Chairperson;
- (b) The Provincial Secretary and Deputy Secretary;
- (c) The Provincial Treasurer;
- (d) The Organising Secretary and Deputy Organising Secretary;
- (e) The Secretary for Information and Publicity;
- (f) The Secretary for Elections;
- (g) Chairperson and Secretary of the Provincial Assembly of Women ; and
- (h) The Chairperson and Secretary of the Assembly of Youth.

The Provincial Administrative Committee shall be responsible for the day to day administration of the Province and shall report to the Provincial Executive and shall have no right to make any policy or executive decision.

#### **6.9.1.10. The Provincial Assembly**

The Provincial Assembly shall comprise of:

- (a) The Provincial Executive Committee;
- (b) The Assembly of Women's Provincial Executive Committee;
- (c) The Assembly of Youth Provincial Executive Committee;
- (d) The District Executive Committees in the Province;
- (e) The District Executive Committees of the Women's Assembly in the Province;
- (f) The District Executive Committees of the Youth Assembly in the Province;
- (g) The Chairperson, Secretary, Treasurer and Organizing Secretaries of the Main Wing, Assembly of Women, Assembly of Youth of each Ward ;
- (h) All Chairpersons of Branch Executive Committees; and
- (i) All members of Parliament, Mayors, Councillors, Chairpersons of local authorities in the Province.

**6.9.1.11** The quorum of the Provincial Assembly meeting shall be two-thirds of its membership.

#### **6.9.1.12 Functions of the Provincial Assembly**

- (a) to elect members of the Provincial Executive Committee; and
- (b) to receive reports from the Provincial Executive Committee.

#### **6.9.2 The Provincial Consultative Forum**



6.9.2.1 There shall be a Provincial Consultative Forum in every province to be held, at least, once a year on a date to be determined by the National Executive Committee. The following shall be eligible to attend the Provincial Consultative Forum:

- (a) the Provincial Council as defined in Article 6.9.3;
- (b) all elected Councillors, Members of Parliament, Mayors or Chairpersons of local authorities from the said Province; and
- (c) All members of the National Council from the Provinces not mentioned in (a) and (b) above.

**6.9.2.2 The functions of the Provincial Consultative Forum shall be to:**

- (a) Receive reports from the Provincial Executive on Party activities in the Province;
- (b) Review party programmes relating to Membership recruitment programmes;
- (c) Review the Party's election - preparedness and address commissions and omissions;
- (d) Review advocacy programmes within the Province including rallies, processions, public gatherings;
- (e) Review the operative effectiveness of Members of Parliament including the programme on report back meetings;
- (f) Receive reports from all elected office bearers and deployees including Cabinet Ministers, Mayors and Chairpersons of Councils on their duties;
- (g) Agree on a broad framework of Party activities in the Province; and
- (h) Prepare reports to be submitted to the National Council through the Secretary General.

**6.9.3 The Provincial Council**

6.9.3.1 The Provincial Executive Committee of each Province shall organise at least three Provincial Council meetings in a given year provided that the Provincial Executive Committee or the President of the Party or the National Council may at any time call for a meeting of a Provincial Council.

**6.9.3.2 The Provincial Council shall be composed of:-**

- (a) All Members of the Provincial Executive;
- (b) All Chairpersons, Secretaries, Treasurers, Organising and Information Secretaries of District Executive Committees;
- (c) District Chairpersons of the Women and Youth Assemblies;

- (d) All Ward Chairpersons;
- (e) The Executive Committee of the Assembly of Women of the Provinces; and
- (f) The Executive of the Assembly of Youth of the Province.

**6.9.3.3 The functions of the Provincial Council shall be:-**

- (a) To review the progress of Party programmes within the Province;
- (b) Transact the particular business the Council would have been convened for;
- (c) Select and fill any vacancies that would have risen in the Provincial Executive itself; and
- (d) Do all things necessary for the furtherance of Party interests, subject to the Constitution and the powers of the National Council.

**6.10 The District**

**6.10.1.1**

- (a) There shall be a district structure in any geographical area designated as a constituency for the purpose of a House of Assembly seat.
- (b) Consequentially there shall be a District Executive Committee in every District, which shall meet at least once every month and whose quorum shall be half of its membership.
- (c) The District Executive Committee shall be obliged to set up the following Executive Committees:
  - (i) The Finance and Administration Committee;
  - (ii) The Organising Committee;
  - (iii) The Elections Directorate; and
  - (iv) The Information and Publicity Committee.

The provisions of Article 10 of this Constitution shall apply *mutatis mutandis* here.

**6.10.1.1.2 The District Executive Committee shall comprise of the following:-**

- (a) The Chairperson and Deputy Chairperson;
- (b) The Secretary and Deputy Secretary;
- (c) The Treasurer;
- (d) The Organising Secretary and Deputy Organising Secretary;
- (e) The Secretary for Information and Publicity Secretary;

- (f) The Chairperson, Secretary, Treasurer, Organising Secretary and Secretary for Information and Publicity of the District Assembly of Women Executive Committee;
- (g) The Chairperson The Chairperson, Secretary, Treasurer, Organising Secretary and Secretary for Information and Publicity of the District Assembly of Youth Executive Committee;
- (h) The Chairpersons of the Ward Executive Committees in the District;
- (i) Any elected Member of the House of Assembly for the particular District;
- (j) The District Secretary for Elections; and
- (k) The remaining Policy Secretaries provided in Article 6.5.3 (h) to (ll) excluding (u).

6.10.1.1.3 The District Executive Committee shall be elected at a District Assembly meeting held once every five years provided that elections shall take place at least two months prior to each Provincial Assembly meeting held in terms of section 6.9.1.10.

#### **6.10.2 The District Assembly**

The District Assembly shall comprise of:

- (a) The District Executive Committee;
- (b) The Ward Executive Committees in the District;
- (c) The Chairpersons, Secretaries, Treasurers, and Organising Secretaries of the Branch Executive Committees in the District;
- (d) The Executive Committee of the District Assembly of Women; and
- (e) The Executive Committee of the District Assembly of Youth.

6.10.2.1 The quorum of the District Assembly meeting shall be two-thirds of its membership.

#### **6.10.2.2 Functions of the District Assembly**

- (a) to elect members of the District Executive Committee; and
- (b) to receive reports from the District Executive Committee.

6.10.2.3 The main functions of the District Executive Committee shall be:

- (a) To build the Party in the District;
- (b) Subject to the control of the National Council, to implement the policies and principles of the Party in the District;



- (c) To serve as a liaison between the wards in the District, the branches in the District, and between the District and the Provincial Committees;
- (d) To keep and maintain an up to date register of all Members of the Party in the said District;
- (e) To identify and recommend to the Province persons to participate in National elections;
- (f) To conduct the elections of ward Executives including any gap filling elections;
- (g) To maintain books of accounts and to open bank accounts for the District; and
- (h) To keep and maintain an asset register of the Party assets and the District.

### **6.10.3 The District Council**

6.10.3.1 "The District Executive Committee of each District shall organise at least three District Council Meetings in a given year, provided that the Province shall have a right of calling an ad hoc District Council Meeting.

#### **6.10.3.2 The District Council shall comprise of:-**

- (a) All Members of the District Executive Committee;
- (b) The full Executive of the Women and Youth Assemblies in the District;
- (c) All Ward Executive Members; and
- (d) All Branch Chairpersons, Secretaries, Treasurers and Organising Secretaries.

#### **6.10.3.3 The functions of the District Council shall be to:**

- (a) Review the progress of Party programmes within District;
- (b) To select and fill any vacancy that would have arisen in the District itself;
- (c) To attend to the transaction of the particular business the Council would have been called for; and
- (d) Subject to this Constitution and the powers of the Provincial Committee, to do all things necessary for the furtherance of Party interests and programmes.

6.10.3.4 Members of the District Executive Committees shall be eligible for re-election.

6.10.3.5 Should a vacancy occur in the Executive of any District Executive Committee by reason of death, resignation or expulsion, the District Executive Committee will have the power of co-opting another member of the party into the said District Executive Committee and shall further have the power of appointing any of its members to so act in any acting capacity provided that an election to fill the vacancy so created, shall be held at the next District Council meeting.

## **6.11 The Ward**

**6.11.1** There shall be a Ward Executive Committee for each Ward in Zimbabwe.

### **6.11.1.1 The Ward Executive Committee shall be composed of the following:**

- (a) The Chairperson and Deputy Chairperson;
- (b) The Secretary and Deputy Secretary;
- (c) The Treasurer;
- (d) The Organising Secretary and Deputy Organising Secretary;
- (e) The Secretary for Information and Publicity;
- (f) The Chairperson of the Women and Youth Ward Executive Assembly;
- (g) The Chairpersons of all the Branch Executive Committees in the District;
- (h) All elected Councillors in the Ward;
- (i) The Ward Secretary of Elections;
- (j) The Secretary for Defence and Security;
- (k) The Secretary for Local Government and Devolution;
- (l) The Secretary for Finance and Economic Affairs;
- (m) The Secretary for Education;
- (n) The Secretary for Land and Agriculture;
- (o) The Secretary for National Integration, Healing and Reconciliation;
- (p) The Secretary for Research and Policy;
- (q) The Ward Secretary for Elections;
- (r) The Secretary for Legal Affairs;
- (s) The Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (t) The Secretary for Welfare;
- (u) The Secretary for Home Affairs;
- (v) The Secretary for Tourism and Environment;
- (w) The Secretary for Mines and Mineral Resources;
- (x) The Secretary for Sports and Culture;
- (y) The Secretary for Science and Technology ;
- (z) The Secretary for Information, Communication Technology;
- (aa) The Secretary for Water, Development and Management;
- (bb) The Secretary for Energy and Power Development;
- (cc) The Secretary for Health and Child Welfare; and
- (dd) The Remaining Policy Secretaries provided in Article 6.5.3 .

6.11.1.2 The Ward Executive Committee shall be elected at a Ward Assembly meeting held once every five years provided that the elections shall take place at least two months prior to each District Assembly Meeting held in terms of Article 6.10.2.

6.11.1.3 The Ward Executive Committee shall meet at least once every month and the aforesaid Membership shall constitute the quorum.

**6.11.2 The Ward Assembly shall be composed of:**

- (a) The Ward Executive Committee;
- (b) The Women's Ward Executive Assembly Committee;
- (c) The Youth Ward Assembly Executive Committee;
- (d) The Branch Executive Committees in the Ward;
- (e) The Women's Branch Assembly Executive Committee; and
- (f) The Youth Branch Executive Assembly Committee in the Ward.

6.11.2.1 The quorum of the Ward Assembly Meeting shall be two thirds of its Membership.

6.11.2.2 Members of the Ward Executive Committee shall be eligible for re-election.

6.11.2.3 Should a vacancy occur in the Executive of any Ward Executive Committee by reason of death, resignation or expulsion, the Ward Executive Committee shall have the power of co-opting another member of the party into the said Ward Executive Committee and further shall have the power of appointing any of its members to any acting capacity provided that an election to fill the vacancy so created, shall be held at the next Ward Assembly.

**6.11.2.4 Functions of the Ward Assembly**

- (a) to elect members of the ward Executive Committee; and
- (b) to receive reports from the Ward Executive Committee.

**6.12 The Branch**

6.12.1 There shall be branches established in each ward by the Ward Executive Committee with the approval of the District Executive Committee.

6.12.2 The minimum number of members for the establishment of a Branch shall be fifty (50) provided not more than five Branches shall be established in any one Ward without the permission of the Province and ultimately the approval of the National Executive Committee. Branches based on residential areas or geographic consideration rather than numbers may be established.

6.12.3 No member shall be a member of more than one Branch.



6.12.4 *There shall be a Branch Executive Committee which shall meet at least once every fortnight.*

**6.12.5 The Branch Executive Committee shall comprise of:**

- (a) The Chairperson and Deputy Chairperson;
- (b) The Secretary and Deputy Secretary;
- (c) The Treasurer;
- (d) The Organising Secretary and Deputy Organising Secretary;
- (e) The Secretary for Information and Publicity;
- (f) The Chairperson of the Assembly of Women Branch Executive ;
- (g) The Chairperson of the Assembly and Youth Branch Executive ;
- (h) The Branch Secretary of Elections;
- (i) The Secretary for Defence and Security;
- (j) Secretary for Local Government and Devolution;
- (k) The Secretary for Finance and Economic Affairs;
- (l) The Secretary for Education;
- (m) The Secretary for Land and Agriculture;
- (n) The Secretary for National Integration, Healing and Reconciliation;
- (o) The Secretary for Research and Policy;
- (p) The Branch Secretary for Elections;
- (q) The Secretary for Legal Affairs;
- (r) The Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (s) The Secretary for Welfare;
- (t) The Secretary for Home Affairs;
- (u) The Secretary for Tourism and Environment;
- (v) The Secretary for Mines and Mineral Resources;
- (w) The Secretary for Sports and Culture;
- (x) The Secretary for Science and Technology;
- (y) The Secretary for Information Communication Technology;
- (z) The Secretary for Water Development and Management;
- (aa) The Secretary for Energy and Power Development;
- (bb) The Secretary for Health and Child Welfare; and
- (cc) The Remaining Policy Secretaries provided for in Article 6.5.3.

6.12.6 The Branch Executive Committee members, except for the Chairpersons of

the Assemblies of Women and Youth committees, shall be elected at a Branch Assembly meeting held once every five years provided that elections shall take place at least two months prior to each Ward Assembly meeting held in terms of section 6.11.2.

6.12.7 The Branch Assembly shall be composed of all members of the Party in the Branch and one-half of the membership shall constitute a quorum.

6.12.8 Members of the Branch Executive Committees shall be eligible for re-election.

**6.12.9 A Branch shall cease to exist if:**

- (a) its membership numbers drop below 50 for a period of six months, without the consent of the District Committee being obtained for retaining the Branch; or
- (b) it is decided by a majority vote at a meeting of which 14 days' notice has been given to all members of the Branch that the Branch be dissolved; or
- (c) The Ward Committee decides, after consultation with the Branch Committee and with the approval of the Provincial Executive Committee, to abolish the Branch.

6.12.10 Subject to ratification by the National Executive, the Provincial Council shall have the right of relieving any member of the Provincial, District, Ward and Branch Executive who fails to attend three consecutive meetings of the relevant structure without reasonable excuse, of his/her position.

**6.13 PARTY MEMBERS OUTSIDE ZIMBABWE**

6.13.1 Any Zimbabwean living outside Zimbabwe shall be eligible to be a Member of the Party.

6.13.2 Any group of Party members living outside Zimbabwe in any country shall have the right to form External Branches and External Wards in their areas of residence depending on the population and geographical area of that particular country.

6.13.3 Notwithstanding anything to the contrary in this Constitution, all members outside Zimbabwe and all external structures shall organise themselves into External Branches.

6.13.4 All activities of external structures shall be organised around and by the External Branch.

6.13.5 Each External Branch and External Ward shall have a Main Wing, Assembly of Women, and Assembly of Youth.

6.13.6 The National Organising Secretary shall be the overseer of all External Structures.

### **6.13.7 The External Coordinating Committee**

6.13.7.1 Taking into account the population of Zimbabweans in a particular country, the National Council may declare and direct that a particular country must have an External Coordinating Committee. Once a country is so designated the Party members in that country shall be entitled and obliged to elect an External Coordinating Committee.

#### **6.13.7.3 Election of the External Coordinating Committee**

The External Coordinating Committee shall, at a special meeting called by the National Council elect directly from nominations made by Branches and Wards, the Chairperson, Treasurer, Organising Secretary and Secretary for the Main Wing, Assembly of Women, and Assembly of Youth .

### **6.13.8 Functions of the External Coordinating Committee**

The functions of the External co-ordinating Committee shall be:

- (a) To coordinate the activities of Branches and Wards in the External Assembly;
- (b) To ensure that Branches and Wards are carrying out their duties and functions as enshrined in this Constitution;
- (c) To fundraise for the Party and ensure that all donations, subscriptions and funds raised are fully accounted for and directed to the Treasurer General subject to any directives from the National Executive Committee; and
- (d) To carry-out any other functions directed by the National Council.

6.13.9 The External Coordinating Committee shall not hold office for more than 5 years and the Organising Committee shall be responsible of overseeing the elections of the External Coordinating Committee at a special meeting.

6.13.10 The National Council may, in its discretion, invite any external member and external structure to attend Congress in an observer capacity.

## **ARTICLE 7**

### **THE NATIONAL ASSEMBLY OF WOMEN**

7.1.1 There shall be a National Assembly of Women, membership of which shall be open to all women members of the Party.

**7.1.2 The functions of the National Assembly of Women shall be:**



- (a) To mobilize and organize women to join and participate actively in the Party;
- (b) To ensure that women are fully involved in all Party activities including policy making events and activities;
- (c) To promote the all round development of women and to assist in building their capacity and confidence to articulate their needs nationally;
- (d) To prepare women for leadership positions in not only within The Assembly but also in the main party structures as well as national public positions;
- (e) To support sitting female Members of Parliament and other office bearers in their tasks of representing their constituencies or offices at national level;
- (f) To combat discrimination in public and private life;
- (g) To actively work towards the elimination of laws, customs and statutes that discriminate against women;
- (h) Campaign to end of all forms of violence and discrimination against women ;
- (i) Promote the recognition of women's rights as human rights;
- (j) To promote women's participation in leadership and decision making in both the public and private affairs and to promote the participation of women in every sphere;
- (k) To formulate and carry out training programmes for women;
- (l) To implement the policies of the Party as defined at Congress;
- (m) To design and formulate policies for the Women's Assembly; and
- (n) To supervise the work of the Assembly's National Executive Committee, Management Committee and other lower structures and sub-committees of the Assembly.

### **7.1.3 Women's Assembly National Executive**

There shall be a National Executive Committee of the Women's Assembly ("The Women's National Executive Committee") which shall comprise of :

- (a) The Chairperson and Deputy Chairperson;

- (b) The Secretary of the Assembly of Women and Deputy Secretary of the Assembly of Women;
- (c) The Treasurer and Deputy Treasurer;
- (d) The Secretary for Organizing and Deputy Secretary for Organizing;
- (e) The Secretary for Information and Publicity and Deputy Secretary for Information and Publicity;
- (f) The Secretary for Recruitment and Deputy Secretary for Recruitment;
- (g) The Secretary for Defence and Security and Deputy Secretary for Defence and Security;
- (h) The Secretary for Legal Affairs and Deputy Secretary for Legal Affairs;
- (i) The Secretary for International Relations and Deputy Secretary for International Relations;
- (j) The Secretary for Elections and Deputy Secretary for Elections;
- (k) The Secretary for Constitutional & Parliamentary Affairs;
- (l) The Secretary for Justice and Legal Affairs;
- (m) The Secretary for Home Affairs;
- (n) The Secretary for Tourism and Environment;
- (o) The Secretary for Mines and Mineral Resources;
- (p) The Secretary for Sports and Culture;
- (q) The Secretary for Science and Technology;
- (r) The Secretary for Information, Communication Technology;
- (s) The Secretary for Water and Energy;
- (t) The Secretary for Internal Alliances and Civic Coordination;
- (u) The Secretary for Health;
- (v) The Secretary for Education;
- (w) The Secretary for Local Government;
- (x) The Secretary for Social Welfare;
- (y) The Secretary for National Healing, Integration and Reconciliation; and
- (z) The Secretary for Projects.

7.2 The Women's National Executive Committee shall be elected for five years by women delegates at the party's Congress held in terms of Article 6.2.1 of this Constitution. The Women's National Executive Committee shall be elected in such a manner that each Province has two representatives in the Women's National Executive Committee. The officers referred to in Article 7.1.3 (a) to (e) shall be elected directly into their positions by women delegates at Congress. Those referred to in Article 7.1.3 (h) to (k) shall be elected to their

portfolios by the Women's National Executive Committee at its first meeting after Congress, which shall be held no later than thirty days from the last date of Congress.

7.3 Over and above electing members of the Executive Committee as defined in Article 7.1.3 above, Assembly of Women's delegates to the Congress shall also:

- (a) Receive reports of the work of the Women's Assembly of the preceding five years;
- (b) Review, ratify, modify, alter or rescind any decision taken by any organ of the Women's Assembly;
- (c) Subject to this Constitution and approval by the main party Congress, formulate policies and principles of the Women's Assembly; and
- (d) Recommend to the main Congress any resolutions, policies and amendments to the Constitution.

7.4 Nominations for election to the Women's National Executive Committee shall be made by the Women's Provincial Executive Committees and the provisions of Article 6.8 of this Constitution shall *mutatis mutandis* apply.

7.5 The Women's National Executive Committee shall meet at least once every three months and one-half of its membership shall constitute a quorum.

7.6 Members of the Women's National Executive Committee shall be eligible for re-election.

#### **7.7 Women's Assembly National Council**

There shall be a Women's National Council comprised of the National Executive Committee and the Chairpersons of the Women's Provincial Executive Committees.

#### **7.8 Functions of the Women's National Executive Committee**

Functions of the Women's National Executive shall be:

- (a) to implement and execute all the aims and objectives of the National Assembly of Women as defined in this Constitution;
- (b) to recruit women into the Party;
- (c) to ensure that women's issues and rights are articulated in the Party and at national level;
- (d) to advance the aims and objectives of the Party;
- (e) to supervise and monitor the work of lower structures; and
- (f) to recommend to the appropriate structures disciplinary actions against any lower structure or member of the lower structure.



7.9 The Women's National Council shall meet at least once every four months and one half of its membership shall constitute a quorum.

**7.10 The functions of the Women's Assembly National Council are;**

Subject to the control of the Constitution and the National Council in particular to make decisions for and on behalf of the Women's Assembly :

- (a) To approve, ratify or reject any actions, decisions or proposals of the Women's Executive Committee;
- (b) To receive reports from the Women's Executive Committee; and
- (c) Subject to this Constitution to supervise and control the work, programmes and activities of lower structures of the Women's Assembly.

**7.11 Provincial Executive Committee of Woman's Assembly**

There shall be a Women's Provincial Executive Committee of the Women's Assembly, ("the Women's Provincial Executive Committee") in each Province elected for five years by women delegates at the Provincial Assembly.

7.12 The Women's Provincial Executive Committee shall comprise of the:

- (a) The Chairperson and Deputy Chairperson;
- (b) The Secretary-General of the Women's Assembly and Deputy Secretary-General of the Women's Assembly;
- (c) The Treasurer and Deputy Treasurer;
- (d) The Secretary for Organizing and Deputy Secretary for Organizing;
- (e) The Secretary for Information and Publicity and Deputy Secretary for Information and Publicity;
- (f) The Secretary for Recruitment and Deputy Secretary for Recruitment;
- (g) The Secretary for Defence and Security and Deputy Secretary for Defence and Security;
- (h) The Secretary for Legal Affairs and Deputy Secretary for Legal Affairs;
- (i) The Secretary for International Relations and Deputy Secretary for International Relations;
- (j) The Secretary for Elections and Deputy Secretary for Elections;
- (k) The Secretary for Parliamentary Affairs;
- (l) The Secretary for Justice and Legal Affairs;
- (m) The Secretary for Home Affairs;

- (n) The Secretary for Tourism and Environment;
- (o) The Secretary for Mines and Mineral Resources;
- (p) The Secretary for Sports and Culture;
- (q) The Secretary for Science and Technology Development;
- (r) The Secretary for Information, Communication Technology Development;
- (s) The Secretary for Water and Energy;
- (t) The Secretary for Internal Alliances and Civic Coordination; and
- (u) The Secretary for Projects.

7.13 The Women's Provincial Executive Committee shall meet at least once every three months and one half of its membership shall constitute a quorum.

7.14 Members of the Women's Provincial Executive Committee shall be eligible for re-election.

7.15 The functions of the Women's Assembly Provincial Executive Committee shall be:

- (a) To implement the programs and policies of the Assembly in the Province;
- (b) To mobilize the women in the Province to join the party, vote for the party and to participate in activities of the Party; and
- (c) To work with and under the main Provincial Executive Committee.

#### **7.16 Women's Provincial Council**

There shall be a Women's Provincial Council composed of the Women's Provincial Executive Committee and the Chairpersons of the Women's District Executive Committees in the Province.

7.17 The Women's Provincial Council shall meet at least twice a year and one-half of its membership shall constitute a quorum.

7.18 The functions of the Provincial Council of the Women's Assembly shall be to;

- (a) Review the progress of Women's Party programmes within the Provincial Women's Assembly;
- (b) Elect and fill any vacancy that would have arisen in the Women's Provincial Executive Committee;
- (c) To define any policies and programmes for the Women's Provincial Executive; and
- (d) To work with and under the main Provincial Executive of the Party.

#### **7.19 Women's District Executive Committee**

There shall be a Women's District Executive Committee in each District elected for

five years by women delegates at the District Assembly.

7.20 The Women's District Executive Committee shall compose of :

- (a) The Chairperson and Deputy Chairperson;
- (b) The Secretary-General of the Women's Assembly and Deputy Secretary-General of the Women's Assembly;
- (c) The Treasurer and Deputy Treasurer;
- (d) The Secretary for Organizing and Deputy Secretary for Organizing
- (e) The Secretary for Information and Publicity and Deputy Secretary for Information and Publicity;
- (f) The Secretary for Recruitment and Deputy Secretary for Recruitment;
- (g) The Secretary for Defence and Security and Deputy Secretary for Defence and Security;
- (h) The Secretary for Legal Affairs and Deputy Secretary for Legal Affairs;
- (i) The Secretary for International Relations and Deputy Secretary for International Relations;
- (j) The Secretary for Elections and Deputy Secretary for Elections;
- (k) The Secretary for Parliamentary Affairs;
- (l) The Secretary for Justice and Legal Affairs;
- (m) The Secretary for Home Affairs;
- (n) The Secretary for Tourism and Environment;
- (o) The Secretary for Mines and Mineral Resources;
- (p) The Secretary for Sports and Culture;
- (q) The Secretary for Science and Technology ;
- (r) The Secretary for Information, Communication Technology;
- (s) The Secretary for Water and Energy; and
- (t) The Secretary for Internal Alliances and Civic Coordination.

7.21 The Women's District Executive Committee shall meet at least once every three months and one half of its membership shall constitute a quorum.

7.22 Members of the Women's District Executive Committee shall be eligible for re-election.

**7.23 The functions of the Women's Assembly District Executive Committee shall be:**

- (a) To implement the programmes and policies of the Assembly in the District;
- (b) To mobilize women in the District to join the party, vote for the party and to participate in the activities of the Party; and
- (c) To work with and under the main Provincial Executive Committee.

7.24 There shall be a Women's District Council composed of the Women's District Executive Committee and Chairpersons of the Women's Ward Executive Committees in the District.

7.25 The Women's District Council shall meet at least once every four months and one-half of its membership shall constitute a quorum.

7.26 The functions of the District Council of the Women's Assembly shall be:

- (a) To review the progress of Women's Party programmes within the District;
- (b) To elect and fill any vacancy that would have arisen in the Women District Executive Committee;
- (c) To define any policies and programmes for the Women District Executive; and
- (d) To work with and under the main Provincial Executive of the Party.

7.27 There shall be a Women's Ward Executive Committee in each Ward elected for five years by women delegates at the Ward Assembly.

7.28 The Women's Ward Executive Committee shall compose of :

- (a) Chairperson and Deputy Chairperson;
- (b) Secretary and Deputy Secretary;
- (c) Treasurer and Deputy Treasurer;
- (d) Secretary for Recruitment and Deputy Secretary for Recruitment;
- (e) Secretary for Organizing and Deputy Secretary for Organizing;
- (f) Secretary for Information and Publicity and Deputy Secretary for Information and Publicity; and
- (g) Secretary for Defence and Security and Deputy Secretary for Defence and Security.

7.29 The Women's Ward Executive Committee shall meet at least once every month and one half of its membership shall constitute a quorum.

7.30 Members of the Ward Executive Committee shall be eligible for re-election.

#### 7.31 **Women's Branch Executive Committee**

There shall be a Women's Branch Executive Committee in each Branch elected for



five years by all women members at a Branch Assembly held in terms of Article 6.12 of this Constitution.

7.32 The Women's Branch Executive Committee shall comprise of :

- (a) Chairperson and Deputy Chairperson;
- (b) Secretary and Deputy Secretary;
- (c) Treasurer and Deputy Treasurer;
- (d) Secretary for Organizing and Deputy Secretary for Organizing;
- (e) Secretary for Recruitment and Mobilization and Deputy Secretary for Recruitment and Mobilization;
- (f) Secretary for Information and Publicity and Deputy Secretary for Information and Publicity; and
- (g) Secretary for Defence and Security and Deputy Secretary for Defence and Security.

7.33 The Women's Branch Executive Committee shall meet at least once every month and one half of its membership shall constitute a quorum.

7.34 Members of the Women's Branch Executive Committee shall be eligible for re-election.

7.35 The functions of the Women's Assembly Branch Executive Committee shall be:

- (a) To implement the programmes and policies of the Assembly in the Branch;
- (b) To mobilize women in the Branch to join the party, vote for the party and to participate in the activities of the Party; and
- (c) To work with and under the main Provincial Executive Committee.

#### **7.36 National Assembly of Women Management Committee**

7.36.1 There shall be a Management Committee of the National Assembly of Women which shall be chaired by the Chairperson of the Assembly and whose other members shall be; Deputy Chairperson, Secretary General and Deputy Secretary General, Treasurer, Organising Secretary and Deputy Organising Secretary, Secretary for Information and Publicity.

7.36.2 The Women's Management Committee shall be responsible for the day to day administration of the Assembly of Women, shall report the National Executive Committee of the Women's Assembly and shall not make any executive or policy decisions.

#### **7.37 Women's Consultative Forum**

There shall be a Women's Consultative Forum to be held at least once every year whose functions shall be;

- (a) To discuss policies and issues pertaining to women, gender and children and to make any recommendations to the National Conference and the National Executive Committee;
- (b) To review the policy work of the Women's Assembly; and
- (c) To discuss any issue of national and international importance relevant to the struggle for the emancipation of women.

**7.38 The Women's Forum shall be composed of:**

- (a) all members of the Women's Council;
- (b) all female office bearers in the Party to Provincial level;
- (c) all female Members of Parliament, Councillors, Government Ministers and members of the National Executive Committee; and
- (d) female representatives of civil society invited by the Women's Assembly's Executive Committee.

7.39 The Women's National Council, after consultation with all Provinces and with the approval of the National Council, may adopt a constitution for the Women's Assembly provided that nothing in that constitution shall conflict with or be inconsistent with this Constitution. In the event of any such conflict or inconsistency the provisions of this Constitution shall prevail.

**7.40 Finances of the Assembly of Women**

7.40.1 The Women's Assembly shall be primarily funded from grants from the Party.

7.40.2 Subject to the control of the Party's Treasurer General, the Women's Assembly Treasurer shall be the custodian of the funds of the Assembly. No expenditure shall be made on behalf of the Women's Assembly without approval of any two of the following; Women's Assembly Chairperson and Women's Assembly Deputy National Chairperson, Women's Assembly Secretary General and Women's Assembly Deputy Secretary General.

7.40.3 Subject to control by the National Executive and the Treasurer General, the Women's Assembly shall be entitled to receive funds in the form of donations from well wishers and shall further be entitled to raise funds for women's activities in any manner.

7.40.4 The Women's Assembly shall open an account whose signatories are similar to as those of the party at each level.

7.40.5 There shall be an annual audit of women's funds by a firm of reputed auditors in Zimbabwe and report of such audit shall be made annually to the Women's Assembly Council and the National Council.

## **ARTICLE 8**

### **THE NATIONAL ASSEMBLY OF YOUTH**

8.1 There shall be a National Assembly of Youth (hereinafter referred to as the "Youth Assembly"), membership of which shall be open to all members of the Party between the ages of 16 and 35.

**8.2 The functions of the National Assembly of Youth shall be:**

- (a) to mobilize youth to join the Party;
- (b) to ensure that youth are fully involved in all Party activities including policy making events and activities;
- (c) to formulate and carry out training programmes for youth;
- (d) Endeavour to mobilize the youth in the country to unite behind the MDC and actively participate in the struggle for change to create a de-tribalized, non-sexist, non-racial, united, democratic and prosperous society;
- (e) Ensure that young people make a full and rich contribution to the work of the MDC and the nation;
- (f) Support and reinforce the MDC in the attainment of its national democratic project goal(s);
- (g) Promote unity, debate and enhance positive criticism among the youth;
- (h) Fight for children's rights as enshrined in the United Convention on the Rights of the Child, The African Charter On The Rights Of The Child;
- (i) Work for social, political, economic and cultural upliftment of the youth to ensure that an MDC Government creates equal opportunities for the youth to enable them to live a decent and meaningful life;
- (j) Promote the ideas of gender equity and equality in all facets of life and structures especially amongst the youth;

- (k) Engender a spirit of global solidarity, peace and friendship with other progressive nations in the world; and
- (l) Formulate and carry out programmes for the youth in the Party.

### **8.3 Management Committee of Youth Assembly**

There shall be a Management Committee of the National Assembly of Youth which shall be chaired by the Chairperson of the Assembly and whose other members shall be:

- (a) Deputy Chairperson;
- (b) Secretary General and Deputy Secretary General;
- (c) Treasurer;
- (d) Organising Secretary and Deputy Organising Secretary;
- (e) Secretary for Information and Publicity;
- (f) Secretary for Election;
- (g) Deputy Treasurer;
- (h) Deputy Secretary for Information and Publicity; and
- (i) Secretary for Gender.

### **8.4 Youth National Executive**

8.4.1 There shall be a National Executive Committee of the Youth Assembly ("the Youth National Executive Committee") which shall comprise of the following:

- (a) Chairperson and Deputy Chairperson;
- (b) The Secretary General of the Youth Assembly and Deputy Secretary General Of The Youth Assembly;
- (c) The Treasurer and Deputy Treasurer;
- (d) The Secretary for Organising and Deputy Secretary for Organising;
- (e) The Secretary for Information and Publicity and Deputy Secretary for Information and Publicity;
- (f) The Chairperson of the Students' Council;
- (g) The Secretary for Recruitment and Mobilization and Deputy Secretary for Recruitment and Mobilization;
- (h) The Secretary for Defence and Security and Deputy Secretary for Defence and Security;



- (i) The Secretary for Legal Affairs and Deputy Secretary for Legal Affairs;
- (j) The Secretary for International Relations and Deputy Secretary for International Relations;
- (k) The Secretary for Gender Affairs and Deputy Secretary for Gender Affairs;
- (l) The Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (m) The Secretary of the Student Council;
- (n) The Secretary for Constitutional and Parliamentary Affairs;
- (o) The Secretary for Justice and Legal Affairs;
- (p) The Secretary for Home Affairs;
- (q) The Secretary for Tourism and Environment;
- (r) The Secretary for Mines and Mineral Resources;
- (s) The Secretary for Sports and Culture;
- (t) The Secretary for Science and Technology Development;
- (u) The Secretary for Information, Communication Technology Development;
- (v) The Secretary for Water and Energy;
- (w) The Secretary for Small to Medium Enterprises;
- (x) The Secretary for Education; and
- (y) The Secretary for Projects.

## **8.5 Congress of the National Youth Assembly**

8.5.1. The Youth National Executive Committee shall be elected for five years by youth delegates at the Party's Congress held in terms of Article 6.2.1 of this constitution.

8.5.2. The Youth National Executive Committee shall be elected in such a manner that each Province has two representatives (of whom one shall be female) in the Youth National Executive Committee.

8.5.3 The officers referred to in Article 7.1.3 (a) to (e) shall be elected directly into their positions by youth delegates at Congress.

8.5.4. Those referred to in Article 7.1.3 (h) to (k) shall be elected to their portfolios by the Youth National Executive Committee at its first meeting after Congress, which shall be held no later than thirty days from the last date of Congress.

8.6 In addition to youth delegates defined in Article 6.2 (c) of this Constitution, the 30 members of the Students' Council shall attend the Party's Congress, vote and participate the election of the Youth National Executive as defined in Article 8.4

above.

8.7 Over and above electing members of the Executive Committee as defined in Article 8.4 above, Youth delegates to the Congress shall also:

- (a) Receive reports of the work of the National Assembly of Youth for the preceding five years;
- (b) Review, ratify, modify, alter or rescind any decision taken by any organ of the National Assembly of Youth;
- (c) Subject to this Constitution and approval by the main party Congress, formulate policies and principles of the National Assembly of Youth; and
- (d) Recommend to the main Congress any resolutions, policies and amendments to the Constitution.

8.8 The Youth National Executive Committee shall be elected every five years by Youth delegates at the Party's Congress.

8.9 Nominations for election to the Youth National Executive Committee shall be made by the Youth Provincial Executive Committees.

8.10 The Youth National Executive Committee shall meet at least once every three months and one-half of its membership shall constitute a quorum.

8.11 Members of the Youth National Executive Committee shall be eligible for re-election.

#### **8.12 The Youth National Executive**

Functions of the Youth Assembly National Executive shall be :

- (a) to implement and execute all the aims and objectives of the Youth Assembly as defined in this Constitution;
- (b) to recruit Youth in the Party;
- (c) to ensure that youth issues and rights are advanced in the Party and at national level;
- (d) to advance the aims and objectives of the Party;
- (e) to supervise and monitor the work of its lower structures; and
- (f) to recommend to the appropriate structures disciplinary actions against any lower structure or member of the lower structure.

#### **8.13 Youth National Council**

There shall be a Youth National Council composed of:

- (a) The Youth National Executive Committee;
- (b) The Chairperson, Secretary, Organizing Secretary, Treasurer of each Youth Provincial Council;
- (c) One female representative from each Provincial Executive; and
- (d) The Chairperson, Treasurer, Secretary, Organizing Secretary, Secretary for Information and Publicity of the Students' Council.

#### **8.14 The Functions of the National Council of the Assembly of Youth**

- (a) Subject to the control of the National Council to make decisions for and on behalf of the Youth Assembly;
- (b) To approve, ratify or reject any actions, decisions or proposals of the Youth Executive Committee;
- (c) To receive reports from the Youth Executive Committee; and
- (d) Subject to this Constitution to supervise and control the work, programmes and activities of lower structures of the Youth Assembly.

8.15 The Youth National Council shall meet at least once every six months and one half of its membership shall constitute a quorum.

8.15.1 The Management Committee of the Youth Assembly shall be responsible for the day to day administration of the Assembly of the Youth, shall report the National Executive Committee of the Youth Assembly and shall not make any executive or policy decisions.

#### **8.16 The Students' Council**

8.16.1 There shall be a Students' Council of the MDC Youth Assembly consisting of 30 people, elected and appointed by the Youth National Council which shall consist of:

- (a) Elected representatives who are current students in MDC structures at Universities, Tertiary Institutions and other places of learning;
- (b) The Chairperson of the Students' Council shall be elected directly at Congress as defined in terms of 8.5;
- (c) The Students' Council shall elect from amongst itself the following office bearers –
  - (i) Deputy Chairperson;
  - (ii) Secretary;
  - (iii) Deputy Secretary;

- (iv) Treasurer;
- (v) Deputy Treasurer;
- (vi) Secretary for Elections;
- (vii) Deputy Secretary for Elections; and
- (viii) Secretary for Recruitment.

(d) The Chairperson of the Students' Council shall be the Secretary for Tertiary Institutions.

8.17.2 The Students' Council shall meet at least once every 3 months and at least a day before the meeting of the Youth Executive Committee defined in this Constitution.

#### **8.17.3 The functions of the Students' Council**

- (a) To recruit students for membership to the Youth Assembly and the party itself;
- (b) Under the supervision of the Youth Assembly to organize training and cadreship programmes in education institutions;
- (c) Under the supervision of the Youth Assembly to engage in public forums, research and public debates on issues affecting the objectives and aims of the Party;
- (d) Liaise with local and international students bodies such as Zinasu, South African Union of Students; and
- (e) Set up structures at Universities, Tertiary Institutions and other institutions of learning.

8.17.4 The Students' Council shall be an Organ of the Youth Assembly and must be answerable to same.

#### **8.18 Youth Provincial Executive Committee**

There shall be a Youth Provincial Executive Committee in each Province elected for five years by Youth delegates at the Provincial Assembly. At least eight of the members of the Youth Provincial Executive Committee shall be women.

8.19 The Youth Provincial Executive Committee shall comprise of :

- (a) Chairperson and Deputy Chairperson;
- (b) Secretary and Deputy Secretary;
- (c) Treasurer ;
- (d) Secretary for Organizing and Deputy Secretary for Organizing;



- (e) Secretary for Information and Publicity and Deputy Secretary for Information and Publicity;
- (f) Secretary for Defence and Security and Deputy Secretary for Defence and Security;
- (g) Secretary for Gender Affairs and Deputy Secretary for Gender Affairs;
- (h) Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (i) Secretary for Recruitment and Mobilization and Deputy Secretary for Recruitment and Mobilization;
- (j) Secretary for Defence and Security and Deputy Secretary for Defence and Security;
- (k) Secretary for Legal Affairs and Deputy Secretary for Legal Affairs;
- (l) Secretary for International Relations and Deputy Secretary for International Relations;
- (m) Secretary for Gender Affairs and Deputy Secretary for Gender Affairs;
- (n) Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (o) Secretary of the Student Council;
- (p) Secretary for Constitutional and Parliamentary Affairs;
- (q) Secretary for Justice and Legal Affairs;
- (r) Secretary for Home Affairs;
- (s) Secretary for Tourism and Environment;
- (t) Secretary for Mines and Mineral Resources;
- (u) Secretary for Sports and Culture;
- (v) Secretary for Science and Technology;
- (w) Secretary for Information, Communication Technology;
- (x) Secretary for Water and Energy;
- (y) Secretary for Small to Medium Enterprises;
- (z) Secretary for Education; and
- (aa) Secretary for Projects.

8.20 The Youth Provincial Executive Committee shall meet at least once every three months and one half of its membership shall constitute a quorum.

8.21 Members of the Youth Provincial Executive Committee shall be eligible for re-election.

8.22 The functions of the Youth Assembly Provincial Executive Committee shall be:

- (a) To implement the programmes and policies of the Assembly in the Province;
- (b) To mobilize the youth in the province to join the party, vote for the party and to participate in the activities of the Party; and
- (c) To work with and under the main Provincial Executive Committee.

8.23 **There shall be a Youth Provincial Council** composed of the Youth Provincial Executive Committee and the Chairpersons of the Youth District Executive Committees in the Province.

8.24 The Youth Provincial Council shall meet at least twice a year and one-half of its membership shall constitute a quorum.

8.25 **The functions of the Provincial Council of the Youth Assembly shall be:**

- (a) To review the progress of Youth Party programmes within the Provincial Youth Assembly;
- (b) To elect and fill any vacancy that would have arisen in the Youth Provincial Executive Committee;
- (c) To define any policies and programmes for the Youth Provincial Executive; and
- (d) To work with and under the main Provincial Executive of the Party.

8.26 **Youth District Executive Committee**

There shall be a Youth District Executive Committee in each District elected for five years by Youth delegates at the District Assembly provided for in Article 6.10 of this constitution. At least six of the members of the Youth District Executive Committee shall be women.

8.27 **The Youth District Executive Committee shall be composed of:**

- (a) Chairperson and Deputy Chairperson;
- (b) Secretary and Deputy Secretary;
- (c) Treasurer and Deputy Treasurer;
- (d) Secretary for Organizing and Deputy Secretary for Organizing;
- (e) Secretary for Information and Publicity and Deputy Secretary for Information and Publicity;
- (f) Secretary for Defence and Security and Deputy Secretary for Defence and Security;

- (g) Secretary for Gender Affairs and Deputy Secretary for Gender Affairs;
- (h) Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (i) Secretary for Recruitment and Mobilization and Deputy Secretary for Recruitment and Mobilization;
- (j) Secretary for Defence and Security and Deputy Secretary for Defence and Security;
- (k) Secretary for International Relations and Deputy Secretary for International Relations;
- (l) Secretary for Gender Affairs and Deputy Secretary for Gender Affairs;
- (m) Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (n) Secretary of the Student Council;
- (o) Secretary for Constitutional and Parliamentary Affairs;
- (p) Secretary for Justice and Legal Affairs;
- (q) Secretary for Home Affairs;
- (r) Secretary for Tourism and Environment;
- (s) Secretary for Mines and Mineral Resources;
- (t) Secretary for Sports and Culture;
- (u) Secretary for Science and Technology Development;
- (v) Secretary for Information, Communication Technology Development;
- (w) Secretary for Water and Energy;
- (x) Secretary for Small to Medium Enterprises;
- (y) Secretary for Education; and
- (z) Secretary for Projects.

8.28 The Youth District Executive Committee shall meet at least once every three months and one half of its membership shall constitute a quorum.

8.29 Members of the Youth District Executive Committee shall be eligible for re-election.

**8.30 The functions of the Youth Assembly District Executive Committee shall be:**

- (a) To implement the programmes and policies of the Assembly in the District ;

- (b) To mobilize the youth in the province to join the party, vote for the party and to participate in the activities of the Party; and
- (c) To work with and under the main Provincial Executive Committee.

#### **8.31 Youth District Council**

There shall be a Youth District Council comprised of the Youth District Executive Committee and the Chairpersons of the Youth Ward Executive Committees in the District.

#### **8.32 The functions of the District Council of the Youth Assembly shall be:**

- (a) To review the progress of Youth Party programmes within the District;
- (b) To elect and fill any vacancy that would have arisen in the Youth District Executive Committee;
- (c) To define any policies and programmes for the Youth District Executive; and
- (d) To work with and under the main Provincial Executive of the Party.

8.33 The Youth District Council shall meet at least once every four months and one-half of its membership shall constitute a quorum.

#### **8.34 Youth Ward Executive Committee**

There shall be a Youth Ward Executive Committee in each Ward elected for five years by Youth delegates at the Ward. At least six of the members of the Youth Ward Executive Committee shall be women.

#### **8.35 The Youth Ward Executive Committee shall comprise of:**

- (a) Chairperson and Deputy Chairperson;
- (b) Secretary and Deputy Secretary;
- (c) Treasurer;
- (d) Secretary for Recruitment and Deputy Secretary for Recruitment;
- (e) Secretary for Organising and Deputy Secretary for Organising;
- (f) Secretary for Information and Publicity and Deputy Secretary for Information and Publicity;
- (g) Secretary for Defence and Security Deputy Secretary for Defence and Security;
- (h) Secretary for Gender Affairs and Deputy Secretary for Gender Affairs;
- (i) Secretary for Recruitment and Mobilization and Deputy Secretary for Recruitment and Mobilization



- (j) Secretary for Defence and Security and Deputy Secretary for Defence and Security;
- (k) Secretary for International Relations and Deputy Secretary for International Relations;
- (l) Secretary for Gender Affairs and Deputy Secretary for Gender Affairs;
- (m) Secretary for Training and Political Education and Deputy Secretary for Training and Political Education;
- (n) Secretary of the Student Council;
- (o) Secretary for Constitutional and Parliamentary Affairs;
- (p) Secretary for Justice and Legal Affairs;
- (q) Secretary for Home Affairs;
- (r) Secretary for Tourism and Environment;
- (s) Secretary for Mines and Mineral Resources;
- (t) Secretary for Sports and Culture;
- (u) Secretary for Science and Technology Development;
- (v) Secretary for Information Communication Technology Development;
- (w) Secretary for Water and Energy;
- (x) Secretary for Small to Medium Enterprises;
- (y) Secretary for Education; and
- (z) Secretary for Projects.

8.36 The Youth Ward Executive Committee shall meet at least once every month and one half of its membership shall constitute a quorum.

8.37 Members of the Youth Ward Executive Committee shall be eligible for re- election.

**8.38 The functions of the Youth Assembly Ward Executive Committee shall be:**

- (a) To implement the programmes and policies of the Assembly in the Ward;
- (b) To mobilize the youth in the province to join the party, vote for the party and to participate in the activities of the Party; and
- (c) To work with and under the main Provincial Executive Committee

**8.39 Youth Branch Executive Committee**

There shall be a Youth Branch Executive Committee in each Branch

elected for five years by all Youth members at a Branch Assembly. At least eight of the members of the Youth Branch Executive Committee shall be women.

8.40 The Youth Branch Executive Committee shall comprise of :

- (a) Chairperson and Deputy Chairperson;
- (b) Secretary and Deputy Secretary;
- (c) Treasurer and Deputy Treasurer;
- (d) Secretary for Recruitment and Mobilization and Deputy Secretary for Recruitment and Mobilization;
- (e) Secretary for Organising and Deputy Secretary for Organising;
- (f) Secretary for Information and Publicity and Deputy Secretary for Information and Publicity;
- (g) Secretary for Defence and Security and Deputy Secretary for Defence and Security;
- (h) Secretary for Gender Affairs and Deputy Secretary for Gender Affairs; and
- (i) Four Committee Members.

8.41 The Youth Branch Executive Committee shall meet at least once every month and one half of its membership shall constitute a quorum.

8.42 Members of the Youth Branch Executive Committee shall be eligible for re-election.

8.43 The functions of the Youth Assembly Branch Executive Committee shall be:

- (a) To implement the programmes and policies of the Assembly in the Branch;
- (b) To mobilize the youth in the province to join the party, vote for the party and to participate in the activities of the Party; and
- (c) To work with and under the main Provincial Executive Committee.

8.44 The Youth National Council, after consultation with all Provinces and with the approval of the National Council, may adopt a constitution for the Youth Assembly provided that nothing in that constitution shall conflict or be inconsistent with this constitution. In the event of any such

conflict or inconsistency the provisions of this constitution shall prevail.

8.45 Upon the recommendations of the Youth National Executive Committee, the National Council may authorize the establishment of such youth structures and organs as may be appropriate at any tertiary institution or a cluster of tertiary institutions.

**8.46 Youth Consultative Forum**

There shall be a Youth Consultative Forum to be held at least once every year whose functions shall be:

- (a) To discuss policies and issues pertaining to the Youth and to make any recommendations to the National Conference and the National Executive Committee;
- (b) To review the policy work of the Youth Assembly; and
- (c) To discuss any issue of national and international importance relevant to the struggle for the emancipation of the Youth.

**8.47 The composition of the Youth Consultative Forum shall be:**

- (a) all members of the Youth Council;
- (b) all Youth office bearers in the Party to Provincial level;
- (c) all Youth Members of Parliament, Councillors, Government Ministers and members of the National Executive Committee; and
- (d) Youth representatives of civil society invited by the Youth Assembly's Executive Committee.

**8.48 Finances of the Assembly of Youth**

8.48.1 The National Assembly of Youth shall be funded primarily from grants from the Party.

8.48.2 Subject to control by the National Executive and the Treasurer General, the Youth Assembly shall be authorized to receive funds in the form of donations from well wishers and shall further be entitled to raise funds for youth activities in any manner.

8.48.3 Subject to the control of the Party's Treasurer General, the National Youth Treasurer shall be the custodian of the funds of the Youth Assembly. No expenditure shall be made on behalf of the Youth Assembly without approval of any two of the following; Youth National Chairperson and Youth Deputy National Chairperson, Youth Secretary General and Deputy Secretary General.

8.48.4 The Youth Assembly shall open an account whose signatories are the same as those of the party at each level.

8.48.5 There shall be an annual audit of youth funds by a firm of reputed auditors in Zimbabwe and report of such audit shall be made annually to the National Youth Council and the National Council.

## **ARTICLE 8A**

1. There shall be a Disability Council, membership of which shall be open to any member of the Party.

2. The functions of the Disability Council shall be determined by the National Council.

## **ARTICLE 9**

### **OFFICE BEARERS, NATIONAL COUNCIL & THEIR ELECTION PROCEDURES**

#### **9.1 The President**

9.1.1 The President is the leader and Chief Principal Officer of the Party and ultimately accountable to the National Council and Congress, for the vision, strategy, commissions and omissions of the Party subject to this Constitution.

9.1.2 It shall be the duty of the President:

- (a) To uphold and defend the Party Constitution;
- (b) To chair meetings of the National Executive Committee and the National Standing Committee;
- (c) To uphold and defend the principles of the Party;
- (d) To promote the principles of democratic discourse, participation and equality of all members within the Party;
- (e) To present the reports of the National Council, the National Conference and Congress; and
- (f) To perform such other functions and duties and exercise such powers as may be assigned to him or her in terms of this Constitution by the National Council.

9.1.2.1 Notwithstanding any power elsewhere, to convene any extraordinary meeting of Congress, or National Council, the National Executive Committee, Provincial Council or External Assembly, the President shall have the power of convening any such meeting whether ordinary or extraordinary\*.



9.1.2.2 The President is the Custodian of all Party assets and is the Party's Chief Fundraiser\*.

9.1.2.3 The President shall supervise all office bearers in the national leadership structures and may suspend, on reasonable grounds for breach of Party's Constitution, rules and regulations, any member of the National Standing Committee, National Executive Committee, National Council pending investigations and disciplinary action; provided that after suspension of the member as aforesaid the President shall duly report to the National Executive Committee\*.

9.1.3 The President shall in general act as spokesperson of the Party on major policy issues and is the custodian of the Party name, logo and symbol. The President shall be the principal public representative of the Party, provided that nothing in this section shall be construed as empowering the President to act or do anything contrary to the Party's principles of open, transparent and democratic decision making.

9.1.4 The President shall, appoint deputies to officers of Congress from a pool of National Executive members elected from provinces and other office bearers where such is provided for in this Constitution and shall, from time to time, assign functions and responsibilities to various portfolios in the National Executive\*.

## **9.2 Deputy President**

9.2.1 It shall be the duty of the Deputy President:

- (a) To assist the President in the exercise of his or her powers, functions and administrative duties as provided for in this Constitution;
- (b) To act on behalf of the President whenever the President is absent from Zimbabwe or is for any reason unable to perform his or her powers, functions or administrative duties; and
- (c) To perform such functions relating to the function of standing committees and other general matters as may be assigned to him or her by the National Council.

## **9.3 National Chairperson**

9.3.1 It shall be the duty of the National Chairperson:

- (a) To perform the duties of the President's office in the event that both the President and Deputy President are unable to perform the functions of the President's office;
- (b) To be the overall overseer of the general health and state of the Party;
- (c) To be the principal overseer and officer responsible for conflict avoidance, management and resolution of conflicts and disputes between and amongst

individual officers of the party and within the structures and/or organs of the Party;

- (d) To be responsible for the promotion of national healing and reconciliation both internally and externally;
- (e) To monitor, supervise and oversee that all elections in the party, external or otherwise in order to ensure that they are conducted in terms of due process as defined in this constitution and that each election meets the standards expected of the values and principles of the Party;
- (f) To chair the National Disciplinary Committee and the National Directorate of Elections;
- (g) To oversee the general conduct of all elected officials and shall ensure that developmental resources availed to Constituencies are well accounted for and administered in a transparent manner as enshrined in this Constitution;
- (h) To Chair Congress, the National Conference and the National Council; and
- (i) To give reports to the National Executive on matters pertaining to his/her mandate defined in this section.

#### **9.4 Deputy National Chairperson**

It shall be the duty of the National Deputy Chairperson:

- (a) To assist the National Chairperson in the exercise of his or her powers, functions and administrative duties as provided for in this Constitution;
- (b) To act on behalf of the National Chairperson whenever the:
  - (i) National Chairperson is absent from Zimbabwe; or
  - (ii) is for any reason unable to perform his or her powers, functions or administrative duties;
- (c) to perform such functions relating to the functioning of standing committees and other general matters as may be assigned to him or her by the National Chairperson, National Council, National Executive or the President.

#### **9.5 Secretary-General**

9.5.1 The Secretary-General shall:

- (a) Under authority and supervision of the President organise the meetings of the National Executive Committee, National Council, National Conference and Congress and ensure that minutes of these meetings are recorded and kept secure;

- (b) Be responsible for the organization and smooth, effective and efficient administration of Party Secretariat;
- (c) Ensure that meetings of the National Executive, National Council are held as defined in this constitution;
- (d) Keep and maintain all important Party documents, papers, contracts and records;
- (e) Maintain and supervise the maintenance of the Party Membership list and shall be custodian of same;
- (f) Present reports to National Executive Committee, National Conference and Congress;
- (g) Act as spokesperson of the Party on the secretariat and on administrative matters concerning the Party or any other issue to which he is assigned by the President; and
- (h) Perform such other functions and duties and exercise such powers as may be assigned to him or her within the provisions of this Constitution by the President or the National Executive, and in the performance of these duties shall generally be accountable to the President\*.

#### **9.6 Deputy Secretary General**

The Deputy Secretary General shall:-

- (a) Assist and deputise the Secretary General in the performance and exercise of his or her functions, duties and powers provided in this Constitution;
- (b) Act on behalf of the Secretary General whenever the Secretary General is absent from Zimbabwe or is for any reason unable to perform or exercise his or her duties, functions or powers; and
- (c) Perform such other functions and duties and exercise such powers as may be assigned to him or her by the President or the National Standing Committee or the National Council provided that such assignment shall not include powers, duties or functions vested in someone else under the terms of this Constitution.

#### **9.7. Treasurer General**

The Treasurer General shall:-

- (a) Under the supervision of the President and in consultation with the National Executive Committee open and operate such bank accounts and maintain

- such financial records as may be necessary, in accordance to international best practice;
- (b) Subject to this Constitution is the custodian of all Party assets, funds and monies;
- (c) Prepare and present to the National Executive Committee the annual budget of the Party;
- (d) Prepare periodic income and expenditure statements, annual and other budgets of the Party and present same to the National Executive and National Council\*.
- (e) Chair the Treasury and Fundraising Committee;
- (f) Supervise and co-ordinate fundraising activities of the Party; and
- (g) Perform such other functions and duties and exercise such powers as may be assigned to him/her by the President provided that such assignment shall not include functions duties and power vested in another person under and in terms of this Constitution and generally in the performance of his/her duties, shall be accountable to the President\*.

*(\*Article adopted at Fourth Congress)*

## **9.8 The Deputy Treasurer General**

It shall be the duty of the Deputy Treasurer:

- (a) To assist the Treasurer General in the exercise of his or her powers, functions and administrative duties as provided for in this Constitution;
- (b) To act on behalf of the Treasurer General whenever the Treasurer General is absent from Zimbabwe or is for any reason unable to perform his or her powers, functions or administrative duties; and
- (c) To perform such functions relating to the functioning of standing committee and other general matters as may be assigned to him or her by the Treasurer General or National Council or the President.

## **9.9The National Organising Secretary**

The Organising Secretary shall:-

- (a) Conduct the elections of the Provincial Executive Committees;
- (b) Conduct or ensure that Party elections are conducted at Branch, Ward and District level;
- (c) Supervise and co-ordinate the recruitment of members into the Party;
- (d) Be responsible for administering Party structures subject to the control of the Executive and subject and to this Constitution;
- (e) Ensure the establishment of Party structures and organs from the Branch to the Provincial level;
- (f) Supervise and monitor the political programmes of the Provincial, District, Ward and Branch structures of the Party;



- (g) Be responsible for collating, gathering and collecting all lists of Party Membership and Party Members;
- (h) Be responsible for the implementation of the Party's programmes of action and advocacy including organising all activities aimed at achieving the Party's long and short term goals;
- (i) Be responsible for the Party's educational programmes on the Party's values and principles;
- (j) Be the Chief Master of ceremonies at all Party National functions including rallies, public meetings and the National Conference; and
- (k) Perform any such other function and duties and exercise such powers as may be assigned to him or her by the President or the National Chairman or the Secretary General, the National Executive or National Council provided that such a function shall not include functions duties, powers that someone else under and in terms of this Constitution.

#### **9.10 The Deputy National Organising Secretary**

The Deputy Organizing Secretary shall:

- (a) To assist the National Organising Secretary in the exercise of his or her powers, functions and administrative duties as provided for in this Constitution;
- (b) To act on behalf of the National Organising Secretary whenever the National Organising Secretary is absent from Zimbabwe or is for any reason unable to perform his or her powers, functions or administrative duties; and
- (c) to perform such functions relating to the functioning of standing committees and other general matters as may be assigned to him or her by the National Organising Secretary or National Council or the President.

#### **9.11 The Secretary for Information and Publicity**

The Secretary for Information and Publicity shall:-

- (a) Under the supervision of the President act as the General Spokesperson of the Party on all Party affairs;
- (b) Supervise and co-ordinate the development of the Party's communication and media strategies;
- (c) Ensure that the Party Policies are adequately communicated and explained to the public;
- (d) Be responsible for the preparation and approval of the Party's Press releases and advertisement materials of whatever description; and
- (e) Perform such other duties and functions and such powers as may be assigned to him or her by the President or the National Executive Committee or National Council provided that such assignment shall not include powers, duties or functions vested in someone else under in terms of this Constitution.

#### **9.12 The Secretary for Elections shall:**

- (a) Be the Secretary to the Directorate of National Elections;
- (b) Implement the programmes and activities of the National Directorate of Elections;
- (c) Through the Directorate of National Elections be responsible for the development and implementation of the Party's election strategy in both local and national elections;
- (d) Be responsible together with the National Organising Department for the development and implementation of party programmes on voter education and registration;
- (e) Through the Directorate of elections, ensure that at all times the party has a register of trained Election Agents in the Districts and Wards and be responsible for the recruitment and training of elections agents;
- (f) In consultation with Secretary for Defence and Security ensure that all appropriate security measures are put in place before elections; and
- (g) Shall carry out any other function as delegated by the National Directorate of Elections, the President or the National Executive.

#### **9.13 Secretary for Policy and Research**

There shall be a Secretary for Policy and Research whose duties shall be:

- (a) To initiate research on party policies;
- (b) To ensure that at all times the party has updated policies;
- (c) To ensure that party policies are well coordinated and aligned to each other;
- (d) To ensure that party policies are disseminated and publicized; and
- (e) To perform any other duties delegated by the National Council, National Executive Committee or the President.

#### **9.14 Secretary for International Relations and International Cooperation**

There shall be a Secretary for International Relations and International Cooperation whose duties shall include the following:

- (a) To articulate, coordinate and implement the Party's international relations policy;
- (b) To liaise with regional, continental and other international bodies in pursuance of the Party's foreign policy and other related issues;
- (c) Shall be the Deputy Chairperson to the Party's International Relations Committee;
- (d) Shall prepare and submit monthly written reports on the activities of the

International Relations Committee, which reports are to be tabled before the National Standing Committee; and

- (e) Shall perform any other duties delegated by the National Council, National Executive Committee or the President.

#### **9.15 Secretary for Parliamentary and Constitutional Affairs**

There shall be a Secretary for Parliamentary and Constitutional Affairs who shall be a Member of Parliament, whose duties shall include the following:

- (a) In consultation with the Party's Chief-Whips, design and coordinate the Party's Parliamentary programmes and other related Parliamentary activities;
- (b) Shall ensure that all MPs conduct regular Constituency report-back meetings;
- (c) Shall, in liaison with the Secretary for Policy and Research, ensure that all Parliamentarians are well researched and well acquainted with the Party's Parliamentary and Constitutional policies and other related matters;
- (d) To ensure the adoption, development and maintenance of a national constitution that accords with the Party's values, vision and aims of human rights, democracy, good governance and constitutionalism; and
- (e) Shall perform any other duties delegated by the National Council, National Executive or the President.

#### **9.16 Secretary for Justice and Legal Affairs**

The Secretary for Justice and Legal Affairs shall be responsible for the formulation of the Party's Justice Policy and in so doing shall work closely with the Secretary for Constitutional and Parliamentary Affairs:

- (a) Together with the Secretary General shall liaise with the Party's external lawyers and Counsel;
- (b) Shall ensure that all Party members and activists have access to legal services in respect of causes of actions arising out of their membership to the party;
- (c) Shall engage or facilitate research in all legal matters;
- (d) Shall submit monthly written reports to the National Executive Committee on the activities of the Justice and Legal Committee;

- (e) Shall prepare and submit monthly written reports on the activities of the Committee, which reports are to be tabled before the National Standing Committee; and
- (f) Shall perform any other duties delegated by the National Council, National Executive Committee or the President.

#### **9.17 Secretary for Party Business, Investment and Projects**

There shall be a Secretary for Party Business, Investment and Projects whose functions shall be:

- (a) to report to the Finance and Administration Committee;
- (b) to be responsible for the identification for business opportunities the Party may invest in; and
- (c) to perform any other duties as may be delegated by the President or the National Executive.

#### **9.18 Secretary for Information Communication and Technology Development**

There shall be a Secretary for Information Communication and Technology Development whose duties shall be :

- (a) Formulating and articulating the Party's policies in respect of ICTs;
- (b) Ensuring that the Party is ICT compliant;
- (c) Ensuring that all party offices have modern ICT linkages;
- (d) Working under the Secretary for Information and Publicity in the Development of the Party's websites and other ICT platforms; and
- (e) Shall perform any other duties delegated by the National Council, National Executive Committee or the President.

#### **9.19 Secretary for Environmental Protection and Climate Change**

There shall be a Secretary for Environmental Protection and Climate Change whose duties shall include:

- (a) Developing and articulating the Party's environmental policies, especially dealing with the issues of global warming and climate change; and
- (b) Shall perform any other duties delegated by the National Council, National Executive Committee or the President.

The functions, duties and powers of other Party Secretaries not otherwise set out in



this Constitution shall be as defined by the National Council in writing provided that the National Council in so doing shall not assign duties or functions or vest powers already vested in some other Party Officer under and in terms of this Constitution.

#### **9.20 The National Secretariat**

9.20.1 There shall be a National Secretariat consisting of paid employees of the Party with such structures and offices as defined by the Congress and the National Council, provided that all employees in the Secretariat must:

- (a) Subscribe to the aims and objectives of the Party; and
- (b) Be vetted and approved by the Finance and Administration Committee and confirmed by the National Executive.

9.20.2 No member of staff shall be allowed to hold any position in any Party structure. Any member of staff who wishes to contest any election for any political position, within or outside the party shall resign from his office within six months from the date of such Assembly or Congress where the election will be held.

#### **9.21 Death or Resignation of Office - Bearers**

9.21.1 In the event of the death or resignation of the President, the Deputy President assumes the role of Acting President, pending the holding of an Extra-Ordinary Congress that shall be held to elect a new President which Extra-Ordinary Congress to be held no later than a year from the death or resignation of the former President.

9.21.2 In the event of the death or resignation of the National Chairperson, the Deputy National Chairperson shall respectively hold office until the next Congress.

9.21.3 Subject to this Constitution, in the event of the death or resignation of any other member of the National Council, the same shall elect a person to fill that vacancy pending the next Congress.

#### **9.22 Indemnity**

9.22.1 Senior office bearers of the Party and other members of the National Council shall not be liable to the Party and its members for any loss arising from any mistake or omission made in good faith.

9.22.2 Senior office bearers of the Party and other members of the National Council shall be entitled to an indemnity out of the assets of the Party (including future assets) against all costs, damages and expenses incurred by them, in respect of any liability incurred by them, in good faith, in the execution of their powers and duties.

## **ARTICLE 10**

### **PARTY COMMITTEES**

#### **10. General provisions applying to all Committees:**

10.1 The Party shall operate through the Party Committee system and accordingly it shall be the duty of the Secretary General to ensure that all committees are functioning and submitting reports to the National Executive.

10.2 All Policy Committees shall meet at least once a month and shall provide written reports to the Secretary General.

10.3 All Committees shall have a staff co-ordinator whose role is to ensure the smooth coordination of the committee.

10.4 No Committee shall make a decision that is in conflict with the National Executive Committee.

10.5 No decision of any Committee on major issues shall be implemented before approval by the National Executive Committee.

10.6 Activities and reports of the Committee are confidential and no member shall comment on issues being dealt by the Committee without authority of the Secretary General.

10.7 The National Executive Committee shall have the right of replacing a committee which fails to meet for two consecutive months without reasonable justification.

10.8 The primary responsibility of organising meetings and activities of the Committee shall lie primarily with the Chairperson.

10.9 No Chairperson and no Committee can unilaterally co-opt members without the written permission of the National Executive Committee given through the Secretary General.

10.10 All Policy Portfolio Secretaries shall chair their relevant policy development committees.

10.11 The Party shall have the following Committees to protect and further the objectives of the Party;

#### **10.11.1 A. Executive Committees**

- (a) Policy Council;
- (b) Administration and Finance Committee;
- (c) National Directorate of Elections; and

- (d) National Party Building Directorate.

**B. Policy Development Committees**

- (a) Gender and Children's Rights Committee;
- (b) Youth and Development Committee;
- (c) Economic Affairs Committee;
- (d) Education Committee;
- (e) Health and Child Welfare Committee;
- (f) Land and Agriculture Committee;
- (g) Environment and Natural Resources Committee;
- (h) National Healing and Integration Committee;
- (i) Justice and Legal Affairs Committee;
- (j) Constitutional and Parliamentary Affairs Committee; and
- (k) Disability Council.

The President shall have authority to establish additional committees or clusters of committees as may appear to him or her necessary.

**10.12 The Administration and Finance Committee**

10.12.1 The Committee shall have the following as Members:

- (a) Secretary General as Chairperson;
- (b) Treasurer General as Deputy Chairperson;
- (c) Deputy Secretary General;
- (d) Deputy Treasurer General;
- (e) National Organising Secretary;
- (f) The Secretary Generals of the Youth and Women Wings;
- (g) Secretary for Investments, Party Businesses and Projects; and
- (h) Three Committee Members.

**10.12.2 The functions of the Administration and Finance Committee shall be:**

- (a) Recruit and terminate contracts for employees;
- (b) Prepare budgets of the Party;
- (c) Prepare and recommend all budgets and Party revenue and expenditure schedules;
- (d) Attend to all administrative issues including maintenance of asset register, membership register, acquisition and disposal of properties;

- (e) Generally provide administrative leadership in the Party;
- (f) Prepare financial reports for each National Executive Committee meeting through the Treasurer General;
- (g) Prepare financial statements and records for the party; and
- (h) Prepare the annual budget of the party.

#### **10.13 Treasury and Fundraising Committee**

10.13.1 There shall be a Finance Committee which shall comprise of the following members:

- (a) Treasurer General as Chairperson;
- (b) Deputy Treasurer General as Deputy Chairperson;
- (c) Secretary for Investment;
- (d) Treasurers of the Youth and Women Assemblies;
- (e) The Secretary General as an ex-officio member;
- and
- (f) Three other Committee members.

**10.13.2 The functions of the Treasury & Fundraising Committee shall be:**

- (a) To fundraise for the Party;
- (b) To oversee, audit and scrutinise sub-Party accounts of departments, provinces, districts and other Party organs; and
- (c) To prepare investment strategies for the Party, including advice and indications to the National Council on investment proposals.

#### **10.14 The Organising Committee**

10.14.1 There shall be an Organising Committee chaired by the National Organising Secretary whose members include:

- (a) Deputy National Organizing Secretary;
- (b) Treasurer General ;
- (c) Secretary for National Elections;



- (d) Chairpersons and Organising Secretaries of Women and Youth Assemblies;
- (e) Secretary for Policy and Research;
- (f) Secretary for Local Government;
- (g) Secretary for Information and Publicity;
- (h) Secretary for Recruitment and Mobilisation for Women and Youth Assemblies; and
- (i) Three other committee members.

10.14.2 **The functions of the Organizing Committee** shall be as follows:

- (a) Develop and implement a mobilisation and recruitment strategy for the party;
- (b) Ensure that programmes and activities are being carried out in the party in terms of this Constitution and provide regular reports to the National Executive through the Organising Secretary;
- (c) Build and maintain all party structures;
- (d) Ensure that all statutory meetings of lower level structures are held as defined in this Constitution; and
- (e) Develop and implement a cadreship development/training programme.

#### **10.15 Policy Council**

10.15.1 There shall be a Policy Council which shall be chaired by the President and whose other members shall be:

- (a) Secretary General;
- (b) Secretary for Policy and Research Development as Deputy Chairperson; and
- (c) All Chairpersons of the Policy Development Committees.

10.15.2 **Functions of the Policy Committee shall be as follows:**

- (a) Develop a programme for Policy development which shall be executed by each Chairperson of the Policy Development Committees;
- (b) Oversee research for and on behalf of the Party in all matters of policy concern; and
- (c) Develop the party's manifesto and any other such document.

#### **10.16 Advocacy Committee**

10.16.1 There shall be an Advocacy Committee whose members are as follows:

- (a) The Deputy President as Chairperson;
- (b) The Treasurer General;
- (c) The Organising Secretary;
- (d) The Secretary for Information and Publicity;
- (e) Secretary for International Relations as Secretary; and
- (f) Secretaries for International Relations in the Women and Youth Assemblies.

#### **10.16.2 Functions of the Advocacy Committee**

- (a) Develop and implement the Party's programme for international relations;
- (b) Build a strong network of engagement with international organisations and governments;
- (c) Ensure the Party's membership in like-minded international organizations; and
- (d) Build an international campaign promoting the party's values and interests.

#### **10.17 The Directorate of National Elections**

10.17.1 There shall be a Directorate of National Elections which shall:

- (a) Be responsible for the development and implementation of the Party's election strategy in all National and Local Government Elections;
- (b) Be responsible for the development and implementation of the Party's programmes on Voter Registration and Voter education;
- (c) Devise and ensure the implementation of all election anti-rigging strategies and measures for all National and Local Government elections;
- (d) Ensure that all information relating to any and all electoral matters is available to

the Party at all material times;

(e) Supervise and monitor the implementation of all the Party's elections campaign programmes in all elections;

(f) Direct and command any organ or structure and department of the Party to perform any function or duty during any election campaign subject to the control of the National Council;

(g) Ensure that the Party is in a state of preparedness in respect of all National elections that the Party will participate in;

(h) Monitor and observe such elections and present a report to the National Council;

(i) Supervise and control the functions, roles and duties of all Directors of elections at Provincial, District and Ward level; and

(j) Perform such other functions and duties and exercise such powers as assigned to same by the National Council.

**10.17.2 The membership of the Directorate of National Elections shall comprise of:**

(a) The National Chairperson of the Party as its Chair,

(b) The Deputy National Chairperson as its Deputy;

(c) The Treasurer General;

(d) The Organising Secretary;

(e) The Deputy Organising Secretary;

(f) The Secretary for Information and Publicity;

(g) The Secretary for National Elections as the Secretary;

(h) The Secretary for Policy and Research;

(i) The Secretaries of Elections for the Women and Youth Assemblies; and

(j) Eight other members as appointed by the National Executive Committee.

**10.18.0 National Party Building Directorate**

10.18.1 There shall be established a National Party Building Directorate comprising the following:

(a) Deputy National Chairperson;

- (b) Secretary General ;
- (c) Deputy Secretary General;
- (d) Organizing Secretary;
- (e) Treasurer General;
- (f) Chairperson of the Women's Assembly;
- (g) Chairperson of the Youth Assembly;
- (h) Secretary for Elections;
- (i) Secretary for Mobilization and Recruitment;
- (j) All portfolio secretaries responsible for interaction with the national stakeholders; and
- (k) All provincial chairpersons.

#### **10.18.2. Powers and functions of the National Party Building Directorate**

The powers and functions of the National Party Building Directorate are as follows:

- (a) To create a platform where all major party building activities are shared and refined;
- (b) To develop inclusive party building strategies for implementation by the appropriate portfolio secretaries, leaders and organs;
- (c) To craft party building strategies which enhance the party's election winning prospects;
- (d) To exercise oversight role over all party building programs and activities;
- (e) To lay groundwork for winning elections;
- (f) To create a common platform where organizing and mobilization strategies are shared;
- (g) To develop strategies designed to take the party beyond its traditional base into other targeted groups and networks;
- (h) To Evaluate and review all party building programs and strategies;
- (i) To enhance the focus of all internal stakeholders to the common party vision; and
- (j) To deal with conflict which may hinder effective party building activities.\*

*(\*Article adopted at Fourth Congress)*



## **ARTICLE 11**

### **FINANCES**

11.1 The Party shall be financed by membership contributions, donations, any investments by the Party and disbursements that may be due to it.

11.2 Subject to section 9.7 the Treasurer General shall be the custodian of Party funds.

11.3 The National Council shall prescribe the manner in which funds shall be kept and the manner in which money may be withdrawn for Party use, including a prescription of which officers shall be signatories to Party accounts.

11.4 There shall be an annual audit of Party funds by a firm of reputed auditors in Zimbabwe and a report of such audit shall be made annually to the National Council.

11.5 There shall be a Party Trust Account established for the administration and management of trust funds that may be donated and deposited in the Trust Account by those donors requiring that their donations be administered by a Trust.

## **ARTICLE 12**

### **DISCIPLINARY PROCEEDINGS AGAINST MEMBERS OF THE NATIONAL STANDING COMMITTEE**

12.1 Notwithstanding any provision in this Constitution, no disciplinary proceedings against any member of the National Standing Committee shall be commenced without the approval of a two thirds majority of the National Council. The particular affected office - bearer shall face and answer disciplinary charges against him, before an independent tribunal duly appointed by the National Council, comprising of three registered legal practitioners one of whom shall be qualified to be a Judge of the High Court of Zimbabwe.

12.2 The independent tribunal appointed above shall have the powers of meeting out any penalty to the affected official, including expulsion from the Party.

12.3 The independent tribunal, shall be obliged to follow all formal rules of Court proceedings and shall allow the affected official the benefit of legal representation.

12.4 An appeal shall lie from any decision of the above independent tribunal to the National Congress only and such appeal shall be made within fifteen (15) days from the date of determination.

## **ARTICLE 13**

### **ARBITER GENERAL**

13.1 .1 There shall be an Arbiter General who shall be appointed by the President for a term of five years and not for more than ten years.

13.1.2 The Arbiter General shall be a qualified Legal Practitioner who is a member of the Party and who qualifies for appointment as Judge of the High Court of Zimbabwe.

13.1.3 The Arbiter General shall be assisted, in arbitration, by two Assessors appointed by the President from time to time.

13.2.1 Subject to this constitution, The Arbiter General shall receive, investigate and expeditiously arbitrate on complaints, grievances, conflicts or alleged abuses by a member or any organ of the Party at any level and shall submit reports to the President.

13.2.2 The Arbiter General shall investigate reported cases of breach of the Constitution, charge the accused member of the Party and prosecute same before the National Disciplinary Committee.

13.2.3 The Arbiter General shall perform any such other duty as may be assigned to him or her by the President.

13.2.4 The Arbiter General shall report to the President\*.

*(\*Article adopted at Fourth Congress)*

## **ARTICLE 14**

### **THE APPEALS TRIBUNAL**

14.1 The Party shall establish an Appeals Tribunal which shall have the function of hearing and determining appeals on any matter on which a member has a grievance under the Constitution of the Party as well as on all matters in respect of which jurisdiction is conferred by this Constitution.

14.2 Any dispute over the interpretation of this Constitution may be referred to the Appeals Tribunal for a ruling.

14.3 The Appeals Tribunal shall consist of:

- (a) the Appeal Tribunal President, who shall be a trained and qualified legal practitioner of at least seven years experience, a member of the Party and at least 40 years of age; and
- (b) eight other individual members of the Party.

14.4 The Appeals Tribunal shall be elected by Congress and shall serve for five years. Members shall be eligible for re-appointment. Nominations for members of the Tribunal shall be subscribed by two Congress representatives.

14.5 No person shall be eligible for appointment as a member of the Tribunal who is a member of the National Council. A member of the Tribunal shall cease to be so if elected to the National Council.

14.6 Not less than three members of the Tribunal selected by the Appeal

Tribunal President shall sit to hear any appeal. If none of the three is a qualified lawyer, the Tribunal shall employ a duly registered lawyer who may be another member of the Tribunal to attend the Appeal hearing as an Assessor. The Assessor shall advise the Tribunal on points of law and equitable procedure.

14.7 All appeals shall be heard in private except where both parties to the appeal agree otherwise.

14.8 The Tribunal must give reasons for its decision, but shall have discretion whether or not to give publicity to a decision.

14.9 A record of decisions and reasons shall be kept by the Secretary-General.

14.10. An appellant must give notice of an appeal, in writing, within 14 days of receiving advice of any ruling, to the Appeals Tribunal President and shall give a copy of that notice to the Secretary General or to the members of the Party with whom the appellant is aggrieved. Such a body shall act as respondent to the appeal. The Tribunal may refuse to hear an appeal if, in its opinion, there has been undue delay on the part of the appellant in giving notice of appeal in terms of this Rule or if the appeal is deemed to be frivolous or vexatious.

14.11 Except with the agreement of all parties to an appeal, an appeal shall be heard within two months of the receipt of notice of the appeal by the Appeals Tribunal President.

14.12 All members of the Party and all office bearers are bound by this Constitution and, in particular, by the Code of Conduct and Code of Ethics which are incorporated and contained in ANNEXURE B and ANNEXURE C of this Constitution.

## **ARTICLE 15**

### **15. ELECTION OF NATIONAL AND LOCAL GOVERNMENT CANDIDATES**

15.1 The National Council shall maintain a panel ("the panel") of approved members of the Party of good standing who wish to stand for election as Members of Parliament or Local Government posts.

15.2 A member shall be of good standing if he or she:

- (a) is a fully paid up member of the MDC and with the exception of the first election, has been a member for at least five years;
- (b) is a registered voter in the area for which he or she is standing;
- (c) does not have a criminal record as prescribed in the National Constitution;
- (d) is competent and credible; and
- (e) is not insolvent.

15.3 If any member for the Party desires to be entered on the panel, he or she shall submit their curriculum vitae to their respective Provincial Committees.

15.4 The Provincial Committee shall then compile a list of candidates for each constituency and forward such list to the National Council through the Secretary General.

15.5 If the application is approved by the National Council, the applicant shall be entered on the panel.

15.6 Any person entered on the list shall remain so until:

- (a) he or she ceases to be a member of the Party; or
- (b) he or she resigns from the panel by giving notice in writing to the National Council through the Secretary General.

15.7 The National Council shall review the panel after each general election and may require any person wishing to remain on the panel to submit a new application.

15.8 All candidates standing for election shall be approved by the National Council which Council shall take into account the following factors:

- (a) the candidate's history of activities in the party;
- (b) the candidates adherence to the objectives of the Party; and



(c) the candidate's standing in the community.

15.9 On approving candidates, the National Council shall be bound by the obligation to maintain gender balance stipulated in this Constitution.

15.10 The National Council may disqualify or reject any selected candidate where it is satisfied that it is not in the interests of the party for that candidate to stand as the party's candidate in any election.

15.11 Every candidate seeking to hold office as a Local Authority Councillor, Mayor, Member of Parliament or Senator shall be elected by secret ballot through a Primary Election held for that purpose and open to any paid up card carrying member of the Party whose name appears on the membership rolls for that ward or district as the case may be provided that:

- (a) In any election the National Council acting on the recommendations of the National Directorate of Elections shall have the power to determine the regulations governing the conduct of elections including qualifications of candidates to represent the party\*;
- (b) All candidates wishing to participate in a Parliamentary election for a particular District shall send their applications to the National Executive Committee through the Secretary General;
- (c) The National Council shall *at the recommendations of the Elections Directorate* develop a list of candidates for elections for every District in respect of Parliament and Ward in respect of Local Authorities;
- (d) Where more than one candidate has been listed, the National Election Directorate shall conduct an election among the competing candidates in Wards in respect of Councillors and Districts in respect of Parliament; and
- (e) Voting shall be by secret ballot and the candidate polling the highest number of votes shall be declared winner.

15.12 All Party candidates who are elected as Local Councillor, Mayor or Member of Parliament shall, in the performance of their duties as such, work in unison with the Party and be accountable to the appropriate Party caucus and the Party\*.

15.13 All elections for the selection of candidates for Local Government and Parliament, Provincial elections and Congress elections shall be conducted by an independent electoral body appointed by the National Council and that body shall submit election result reports to the National Chairperson provided that the Directorate of National

Elections shall provide a secretariat to that body and provided further that no member of the Directorate of National Elections shall conduct such elections. \*.

*(\*Article adopted at Fourth Congress)*

## **ARTICLE 16**

### **SPECIAL POWERS OF THE NATIONAL COUNCIL IN RELATION TO ELECTIONS**

17.1 The National Council, notwithstanding anything contained herein shall have the absolute discretion of determining the manner and process of any selection including the power of making any appointment for any position.

17.2 Furthermore, the National Council shall in the interest of gender representation have the power of reserving any seats or positions for women.

17.3 The National Council shall have the power of directing that no primary shall be held in any Constituency for good reason.

17.4 The National Council may disqualify or reject any selected candidate where it is satisfied that it is not in the interests of the party for that candidate to stand as the party's candidate in any election.

17.5 In the event of such a disqualification or rejection, the National Council may call for another selection process and election or may itself choose the candidate by a 2/3 majority.

## **ARTICLE 17**

### **AMENDMENTS TO CONSTITUTION**

18. Any amendment to this Constitution shall require approval by at least two thirds of the delegates present and voting at Congress.

## **ARTICLE 18**

### **OVERSIGHTS AND OMISSIONS**

19. In any place where the requirements of this Constitution cannot be satisfied because of an omission or oversight in draughtsmanship, or because a body provided for has not been established, or an officer provided for in this Constitution has not been elected or appointed, or because of a procedural problem; the National Council shall have the power to make such arrangements which, in their opinion, satisfy the spirit of this Constitution and shall seek approval for such arrangements at the next Congress.

## **ARTICLE 19**

### **DISSOLUTION**

20.1 A motion to dissolve the Party can only be placed on the Agenda of a meeting of Congress upon the written request of one third of those entitled to attend Congress or upon written request of at least two thirds of the Provincial Executive Committees.

20.2 A resolution to dissolve the Party shall be considered adopted if it has received the affirmative votes of at least three quarters of the total membership of Congress.

20.3 In the event of the dissolution of the Party its property and assets of whatever description shall be disposed of for such charitable purposes as determined by the National Council existing at the time of dissolution, provided that no member of the Party shall benefit from such disposal.

## **ANNEXURE A**

### **SOLEMN DECLARATION**

#### **DECLARATION IN TERMS OF ARTICLE 5.3 (h) OF THE CONSTITUTION**

I .....  
of.....belonging to the

.....Branch in .....Province do hereby solemnly declare that;

1. I have exercised my constitutional right to join the Movement for Democratic Change and therefore agree and accept to be bound by its constitution and pledge my allegiance to the MDC, the Party constitution and the Constitution of Zimbabwe.
2. I shall serve faithfully and diligently, with loyalty to the MDC and the people of Zimbabwe.
3. I shall pursue the goals of attaining peaceful, democratic change in my country, Zimbabwe, and the subsequent transformation of my country into a modern and stable democratic State.
4. I shall abide by the Party's Code of Conduct, the Real Change Code of Ethics and shall desist and not partake in any violence, theft, corruption, rumour mongering, mudslinging or any other commission or omission inconsistent with my membership of the MDC.
5. I shall work to promote the rule of law in Zimbabwe including the legislative supremacy of parliament, the independence of the judiciary and the right to every person in Zimbabwe to hold different opinion to the other.
6. I shall always defend, protect and respect the protection of human rights and democratic freedoms.
7. I shall oppose and never practise violence, nepotism, factionalism, clannism, sexism, and tribalism or any other form of discrimination based on race, tribe, colour, gender, religion or personal preferences.
8. I shall be transparent in my business transactions and never allow my personal interest to prevail over public interest and in this regard I undertake to file and complete annually an asset declaration form to be lodged with the Party.
9. I shall accommodate criticism and observe the social democratic principles and values of transparency, accountability, freedom, empathetic leadership, equality, accountability and good governance.
10. I hereby irrevocably agree that this pledge of commitment constitutes a



binding legal contract between me and the Party and that I shall obey any notice from the National Council requiring me to vacate any position or any other office that the party nominated, appointed, elected me to or caused my election to; in the event that I breach the Code of Conduct, the Real Change Code of Ethics, this pledge or in the event that I am expelled from this party.

Signed on the.....of.....20.....

.....

Signature

.....

Signature

## **ANNEXURE B**

### **REAL CHANGE CODE OF ETHICS FOR ALL OFFICE BEARERS AND MEMBERS OF THE PARTY**

#### **Preamble**

Article 3 of the MDC Constitution captures the values of the Party; of solidarity, justice, equality, liberty, freedom, transparency, humble and obedient leadership and accountability as its core founding values.

Further, the Movement seeks to pursue the values of social liberation, social justice and democratic empowerment and the transformation of Zimbabwe.

Pursuant to the above values, the movement has come up with a Code of Conduct. The Party now adopts this Code.

#### **SECTION 1**

##### **1) Title**

This code may be cited as the *Movement for Democratic Change Code of Conduct 2010*, (hereinafter referred to as “***The Real Change Code of Ethics and Values***”).

##### **2) Application**

This code shall apply to all elected, appointed or deployed officials of the Movement for Democratic Change serving in the Party, Government, local authorities, any institution receiving public funds, parastatals, voluntary associations and any other public or private body howsoever defined.

##### **3) Objectives of the Real Change Code of Conduct.**

3.1.0. To regulate the conduct of all officials holding public positions.

3.1.1. To set and determine standards for elected, appointed and deployed officials holding office.

3.1.2. To make all officials of the MDC accountable to certain ethical and moral standards of excellence that recognize the values of the Party and the interests of the public to be at the centre of their conduct and operations.

3.1.3. To maintain public confidence and trust in the integrity of elected or appointed representatives and officials of the MDC individually, and the respect and confidence that society places on such offices as their institutions.

3.1.4. To provide a legitimate and transparent yardstick for the evaluation of all elected or appointed representatives of the MDC.

3.1.5. To provide for greater certainty and guidance for elected, appointed, or deployed representatives of the MDC on how to reconcile their private lives with their public duties in pursuit of excellence.

3.1.6. To foster consensus among elected officials of the MDC by establishing common rules and by providing the means by which questions relating to proper conduct maybe answered.

## **SECTION 2**

### **4) Principles**

All elected, appointed or deployed representatives of the MDC are expected to uphold the following principles.

#### **4.1.0. Upholding the MDC Constitution.**

MDC elected, appointed or deployed representatives of the MDC shall uphold the Constitution of the Party and be loyal to the values, aims and objects of the same so as to maintain and enhance public confidence and trust in the integrity of the Party and offices it holds.

#### **4.1.1. Public Scrutiny.**

MDC elected, appointed or deployed officials shall perform their official duties and arrange their private affairs in a manner that allows the closest public scrutiny. This obligation is not fully discharged by simply acting within the law.

#### **4.1.2. Independence.**

MDC elected, appointed or deployed officials shall take care to avoid placing themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their duties. Particular vigilance should be exercised when dealing with paid lobbyists.

#### **4.1.3. Primacy of the Public interest.**

Upon election, appointment or deployment to office, MDC officials shall arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if a conflict does arise, it shall be resolved in a manner that protects the interests of the public.

#### **4.1.4. Gifts and Personal Benefits.**

MDC elected, appointed, deployed or representatives of the MDC shall not accept any gift or favour on behalf of the MDC that may reasonably be seen to compromise their personal judgment or integrity, or bring the Party into disrepute.

**4.1.5. Respect for the law and the Party**

MDC elected, appointed or deployed officials shall be bound by the provisions of Article 4 of the Prevention of Corruption Act as read with the necessary regulations.

**4.1.6. Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or anything with commercial interests, recommending individuals for rewards or benefits; MDC elected, appointed or deployed representatives and officials shall make choices on the basis of merit.

**4.1.7. Leadership**

MDC elected, appointed or deployed officials shall promote and sustain these principles by leadership and by example.

**5.1.0 The Real Change Code**

**5.1.1 Disclosure**

All MDC public officials shall at by the 13th of January of each year deposit with a designated law firm a list of immovable property, movable property, liabilities in and outside Zimbabwe.

**6.1.2. Disclosure of conflict of interest**

a) MDC elected officials shall take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their duties and all the boards and organizations for which they sit.

b) A conflict of interest does not exist where an official is only affected as a member of the public or a member of a broad class.

**6.1.3 Transitional Clause**

Within 30 days of the adoption of the Real Change Code by the National Council, all MDC appointed, deployed or elected officials must deposit with the law firm defined in Section 5.1.1 a record of items defined in the same.

**6.1.4. Bribery**

MDC elected, appointed or deployed representatives shall not promote any matter, vote on any bill or resolution, or ask any questions in return for a payment or favour.

**6.1.5. Gifts**



(a) MDC elected, appointed or deployed officials must declare all gifts and benefits of a value above \$US50 received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.

(b) MDC elected officials must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the member in the exercise of his or her duties.

**6.1.6. Use of Public Resources**

MDC elected, appointed or deployed officials must use the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

**6.1.7 Use of confidential information**

MDC elected, appointed or deployed officials must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for the private benefit of themselves or others.

**SECTION .3**

**6.1.8** To the extent that that MDC has a clear position on land and conservancies or commercial interests, it shall be a breach of this code if any elected, deployed or appointed member of the Party should acquire any land or conservancy in a manner which is inconsistent with the position of the Party.

**6.1.9 Disciplinary procedures.**

All disciplinary cases and procedures shall be dealt with in terms of the Constitution provided that, notwithstanding any provision in the Constitution, the Party shall have the right to suspend or dismiss any official in breach of this Real Change Code after due process has been followed.

**6.1.10. Enforcement mechanisms.**

**6.1.11 Schedule of offences**

**Schedule 1 (Very serious offences)**

(a) Murder.

(b) Rape.

(c)Violence.

(d)Domestic violence.

(e) Sexual harassment.

- (f) Use of abusive language.
- (g) Malicious gossiping.
- (h) Robbery.
- (i) Theft.
- (j) Corruption.
- (k) Bribery.
- (l) Fraud .
- (m) Extortion.
- (n) Nepotism.
- (o) Factionalism.
- (p) Tribalism, racism and sexism.
- (q) Failure to disclose assets fully.
- (r) Receipt or acquisition of assets in breach of the position of the Party.
- (s) Failure to disclose conflict of interest.
- (t) If one is convicted and sentenced to a period of more than 6 months without the option of a fine by a competent court.

#### **Schedule 2 (Moderate offences)**

Threat of physical harm.

#### **Schedule 3 (Light offences)**

- (a) Unbecoming behaviour in public.
- (b) Drunken driving.
- (c) Loan sharking.

#### **Declaration**

I.....  
, the member of the Movement for Democratic Change, individually agree to abide by the principles, rules and obligations of this Code of Conduct.

(Signed).....Date .....

In witness thereof on behalf of the Party.....

Signature .....Date .....

## **ANNEXURE C**

### **DISCIPLINARY CODE OF CONDUCT AND REGULATIONS**

#### **1. DISCIPLINARY CODE OF CONDUCT AND REGULATIONS**

1.1 The Code and Regulations shall bind all members and elected officers of the party at all levels.

1.2 For the avoidance of doubt, it is declared that all members must abide by the Constitution of the MDC ('the Party'), this Code of Conduct and Regulations and any such rules and lawful instructions that may be made or issued by the National Council, the National Executive or its elected officers and the National Disciplinary Committee.

1.3 Disciplinary proceedings and offences shall be confined to violations of the party's Constitution, code of conduct and Regulations or the commission of offences or misconduct as set out in the constitution and this code.

1.4 Disciplinary proceedings shall not be used as means of:

(a) Stifling debate or denying members their democratic rights of freedom of speech, expression and association, or

(b) Interfering in the private lives of members and for settling personal scores, disagreements and vendettas.

#### **2 OFFENCES**

2.1 An offence shall be committed by a member who:

(a) For whatever reason, brings the name of the Party into disrepute or ridicule;

(b) Commits any act of omission or commission which is against the express or implied conditions of one's membership and Party constitution;

(c) Breaches the Party's Real Change Code of Ethics or the Solemn Declaration (Annexure A) of this Constitution;

(d) ) Unduly interferes with the operational capacity or efficiency of the party;

(e) Obstructs the members or employees of the party from performing lawful functions;

(f) Impedes the work or activities of the party;

(g) Creates or promotes division within the ranks of the party;

(h) Engages in rumour - mongering, malicious gossiping, slander, character assassination or fronticism;



- (i) Acts in collaboration with another political organization in a manner which is detrimental to the achievement of the aims and objects of the MDC;
- (j) Collaborates with any intelligence organization or security service against the interests of the Party or its members;
- (k) In any way or manner interferes or does any act which undermines or hinders the fulfilment of the Party's aims and objectives;
- (l) Engaging in illegal or corrupt electoral practices, including vote buying, intimidation, violence and tampering with the voters roll or the Electoral College;
- (m) Engaging in fraud and theft;
- (n) Engaging in acts of violence directly or through inciting others to commit acts of violence;
- (o) Disrespecting and undermining any organ or elected official including failure to respect the protocol of the Party;
- (p) Conviction in a court of law of a non-political offence and being sentenced to a term of imprisonment without the option of a fine;
- (q) Promoting or practicing racism, sexism, tribalism, religious or political intolerance or discrimination or regionalism;
- (r) Conduct likely to provoke serious divisions or a breakdown of unity within the Party;
- (s) Undermining respect for or impeding the functioning of the structures of the party at any level; and
- (t) Participating in organized factional activity which threatens the unity of the Party or lobbying based on factionalism and which goes beyond the recognized norms of canvassing or free debate.

### **3 THE NATIONAL DISCIPLINARY COMMITTEE**

3.1.1.1 There shall be a National Disciplinary Committee, chaired by the National Chairperson, which shall be the main disciplinary organ of the party.

#### **3.1.1.2 Functions of the National Disciplinary Committee**

- (a) To sit as a tribunal of first instance in hearing and determining any allegations of misconduct against any member or any Party organ or structure.
- (b) Following due process, to impose any penalties on any member or structure found guilty including suspension, demotion and, subject to ratification by the

National Council; expulsion from the Party.

- (c) To sit as a Court of Appeal in respect of any appeals from disciplinary hearings conducted by any *ad hoc* Disciplinary Committee or a Local Disciplinary Committees at Branch, Ward, District or Provincial level.
- (d) To hear and determine any grievance made against the National Executive Committee or any member of the National Executive Committee.

### **3.1.2 Composition of the National Disciplinary Committee**

The National Disciplinary Committee shall serve for a term of five years and shall be composed of:

- (a) The National Chairperson of the Party who shall serve as its Chairperson;
- (b) Five other members of the Party appointed by the National Executive Committee provided that two of the members shall be nominated by the National Assemblies of Women and Youth;
- (c) The quorum of the National Disciplinary Committee shall be three members;
- (d) Should any vacancy occur in the National Disciplinary Committee, or should the appointed Members be unable to sit on the grounds of fairness or any other good reason, the National Executive shall have the powers to fill in such vacancies or to appoint an *ad hoc* National Disciplinary Committee; and
- (e) Any Appeal against the decision of the National Disciplinary Committee shall be submitted within (fourteen) 14 days from the determination to the Appeals Tribunal through the office of the Secretary General.

### **3.2 Lower Structure Disciplinary Committees**

3.2.1 There shall a Disciplinary Committee at the local level of Branch, District and Provincial levels, provided that disciplinary proceedings against the Executive Members of any lower structure shall be dealt with by the immediate upper structure.

### **3.3 The Branch Disciplinary Committee**

3.3.1 The Branch Disciplinary Committee shall be chaired by the Deputy Chairperson of the Branch and shall comprise of four other members of whom two shall be appointed by the Branch Executive of the Women and Youth Assemblies.

3.3.2 The Branch Executive shall have the right of formulating and laying any charges against any Branch member which charges shall be heard by the Branch Disciplinary Committee.

### **3.4 The Ward Disciplinary Committee**

- 3.4.1 The Ward Disciplinary Committee shall be chaired by the Deputy Chairperson of the Ward and shall comprise of four other members appointed by the Ward Executive Committee of which two shall be appointed by the Ward Executive of the Women and Youth Assemblies.
- 3.4.2 The Ward Executive shall have the right of formulating and laying any charges against any Branch member which charges shall be heard by the Ward Disciplinary Committee.

### **3.5 The District Disciplinary Committee**

- 3.5.1 The District Disciplinary Committee shall be chaired by the Deputy Chairperson of the District and shall comprise of four other members appointed by the District Executive Committee of which two shall be appointed by the District Executive of the Women and Youth Assemblies.
- 3.5.2 The District Executive shall have the right of formulating and laying any charges against any District member which charges shall be heard by the District Disciplinary Committee.
- 3.5.3 The District Disciplinary Committee and the District Executive shall have the power of laying any charges against any elected Councillor.
- 3.5.4 At the time of laying any charges against any member, the District Executive shall have the right of suspending that particular member, through the District Chairperson, pending the conclusion of the disciplinary hearing against the concerned member.
- 3.5.5 Where the Chairperson has suspended a member, as described above, he or she shall forthwith and in any event by no later than 7 (seven) days, write to the Organising Committee through the office of the Secretary General informing the same.
- 3.5.6 The Organising Committee shall within 14 days confirm or rescind the suspension.

### **3.6 The Provincial Disciplinary Committee**

- 3.6.1 The Provincial Disciplinary Committee shall be chaired by the Deputy Chairperson of the Province and shall comprise of three other members appointed by the Provincial Executive Committee of which two shall be appointed by the Provincial Executive of the Women and Youth Assemblies.
- 3.6.2 The Provincial Executive shall have the right of formulating and laying any charges against any Branch member which charges shall be heard by the Provincial Disciplinary Committee.

- 3.6.3 The Provincial Disciplinary Committee and the Provincial Executive shall have the power of laying any charges against any elected Member of Parliament, Mayor or Chairperson of a Local Authority provided that the concerned office bearer is not a member of the National Council.
- 3.6.4 At the time of laying any charges against any member, the Provincial Executive shall have the right of suspending that particular member, through the Provincial Chairperson, pending the conclusion of the disciplinary hearing against the concerned member.
- 3.6.5 Where the Chairperson has suspended a member, as described above, he or she shall forthwith and in any event by no later than 7 (seven) days, write to the Organising Committee through the office of the Secretary General informing the same.
- 3.6.6 The Organising Committee shall within 14 days confirm or rescind the suspension.

### **3.7 Powers to Take Disciplinary Action**

- 3.7.1 Save for the National Standing Committee & National Executive Committee a structure shall only have powers to discipline members within the same level.
- 3.7.2 Subject to ratification by the National Executive, the National Standing Committee shall have the power of suspending any member of ward, district or branch.
- 3.7.3 The suspension of any member of the National Standing Committee shall be in terms of the Constitution.

## **4 The Organizing Committee**

4.1.1 Without derogation from any powers of the National Chairperson defined in Article 9.3 of the Constitution, the Organizing Committee shall have a general responsibility of ensuring that discipline is maintained in the Party structures.

4.1.2 Notwithstanding anything to the contrary, the Organizing Committee shall have the derogated power of suspending any individual in any lower structure on reasonable grounds or suspicion that an offence has been committed.

4.1.3 Within 14 days of such suspension the Organising Committee shall in writing report to the National Standing Committee on the suspension. The National Standing Committee shall:

- (a) confirm or reverse the suspension; and
- (b) refer the matter to the appropriate disciplinary committee.

4.1.4 Where the Organising Committee has acted on the report of any suspension



by a District Chairperson or Provincial Chairperson as defined in Article 3.5 and 3.6 of this Code, it shall within 14 days of its decision, in writing, report the matter to the National Standing Committee.

4.1.5 The National Standing Committee on receipt of the above report shall uphold or reverse the decision of the Organising Committee.

## **5 Ad hoc Disciplinary Committee**

5.1.1 The National Executive Committee and the National Standing Committee shall have the right of appointing an ad hoc Disciplinary Committee in any matter and at any level of the Party provided that an individual may be appointed as an Ad hoc Committee.

5.1.2 An Ad hoc Disciplinary Committee shall have the power of meting any penalty to a member other than expulsion. If in the opinion of a particular ad hoc Committee, the appropriate penalty against the member is that of expulsion then it shall refer its recommendation to the National Executive. The National Executive may accept such a recommendation. Notwithstanding any such action by the National Executive, the decision to expel shall remain entirely that of the ad hoc Committee and shall be appealable to the National Disciplinary Committee.

5.1.3 Any member aggrieved by the decision of any ad hoc Disciplinary Committee shall have the power of appealing to the National Disciplinary Committee within 14 days from the date of the determination or decision.

5.1.4 Where the National Standing Committee has suspended an individual the same shall have the power of appointing an Ad hoc Disciplinary Committee provided that the National Standing Committee can set up a one person disciplinary committee.

5.1.5 Any person brought before the Disciplinary Committee shall be entitled to the rules of fairness as defined in this Constitution.

## **5.2 Preventive Suspension**

5.2.1 Where it is considered that it is in the best interests of the Party, the National Standing Committee or National Executive with the ratification of the National Council shall have the power of suspending any ordinary member of any structure with a view of protecting the Party.

## **6 Grievance Handling Procedures**

6.1 Any member of the Party aggrieved by the conduct, activity, omission or commission and decisions of any lower structure or any other member, may raise in a grievance in prescribed form to the Chairperson of an appropriate lower structure.

- 6.2 The Chairperson of the appropriate lower structure, where the grievance has been referred to shall direct the matter to his or her lower structure Executive which organ shall deal with the grievance within 14 days of receipt of the written grievance.
- 6.3 Any member aggrieved by the decision of the appropriate structure on the grievance shall refer the same to the National Chairperson who shall make a ruling on the matter within 14 days of receipt of the notice of appeal from the concerned member.
- 6.4 Any person aggrieved by the decision of the National Chairperson shall have the right to appeal to the National Executive within 14 days of the receipt of the National Chairperson's determination.
- 6.5 The decision of the National Executive which must be made no later than two months from the date of appeal shall be final.

## **7 Disciplinary Time Frames**

- 7.1 Where the Executive of any lower structure has proffered charges against any member, a written charge sheet outlining the offence committed and details of the facts shall be provided to the concerned member no later than 7 days of the date of the meeting where the decision was made.
- 7.2 The Disciplinary Committee of the lower structure concerned shall hear and determine the disciplinary matter against the member within 30 days of the date of issuance of the charges against the member.
- 7.3 Where on good reason, a local disciplinary committee is unable to complete the matter in the defined time periods it shall request in writing an extension from the National Chairperson, provided that the National Chairperson shall have the power of granting an extension that does not exceed 14 days.
- 7.4 Where any member of a lower structure is suspended by the Chairperson of a lower structure as defined in this code, such suspension will lapse if after the member's matter has not been heard in a period of 60 days.

## **8 GENERAL PROVISIONS APPLYING TO ALL DISCIPLINARY PROCEEDINGS**

- 8.1 Any member accused of an act of misconduct shall be entitled to a written notice of the hearing which notice shall specify the alleged act of misconduct or charges against him or her; the provision of the Constitution he or she is alleged to have acted in breach of, the date, time and place where the hearing will take place; and the right of the member to be represented at the hearing by a member of the party of his choice.
- 8.2 The notice summoning a member to a disciplinary hearing shall be delivered to him or her personally or his or her residence or at his place of work, at least 5 days

before the date of the hearing.

8.3 A member appearing before any disciplinary committee shall be afforded a reasonable opportunity to defend himself or herself. He or she shall be entitled to call witnesses to testify on his or her behalf and to question witnesses called to give evidence against him or her.

8.4 All persons appearing before any Disciplinary Committee shall be presumed innocent until proven guilty.

8.5 Disciplinary proceedings must be commenced against any member within five months of the date that the allegations against him or her became known.

8.6 The Chairperson of every Disciplinary Committee shall ensure that every Disciplinary hearing is conducted fairly, justly and in a dignified and orderly manner.

8.7 At the commencement of every disciplinary hearing, the charges shall be read to the member accused of misconduct and he or she shall be asked as to whether he or she pleads guilty or not guilty.

8.8 Whenever proceedings are conducted in a language that the charged member does not understand or when a witness gives evidence in a language not understood by the charged member, the chairman of the committee shall ensure that the evidence or questions are interpreted for the charged member at the time the question is asked or the evidence is given.

8.9 A disciplinary committee shall be entitled to receive documentary evidence and to rely on it provided that the charged member is given an opportunity to answer to or to rebut the documentary evidence so received.

8.10 Where a disciplinary committee is satisfied that an accused member was duly and timeously notified of the charges against him or her and the date, time and place of the hearing and that member has not attended the hearing, the committee shall be entitled to proceed with the hearing in the absence of the member.

8.11 The Chairperson of every disciplinary committee shall ensure that minutes of every disciplinary hearing are recorded or taken, including the record of the decision or judgment arrived at and the reasons for arriving at that decision or judgement.

8.12 The following elements must be present at a Disciplinary proceeding:

- (a) A Disciplinary Committee that is quorate;
- (b) The presenter of the charge, the complainant or his or her representative;
- (c) The charged member, who can be tried in her or his absence if she or he does not appear;

(d) The charged member's representative and an interpreter who is a member of the MDC in good standing;

(e) The witnesses; and

(f) A minute taker.

7.13 The complainant in any disciplinary case shall be the appropriate organ or Executive where that member reports to.

7.14 Any organ or individual suspending any member in terms of this constitution shall specify clearly the grounds of the suspension and shall define and identify the breach or offence the member or organ is accused of having committed.

7.15 Where the District or Provincial Chairperson fails to notify the Organising Committee of any suspension as defined in this Code, then the same shall lapse.

## **8 JUDGEMENT AND DECISIONS OF DISCIPLINARY COMMITTEES**

8.1 Every disciplinary case must be concluded within two months of its commencement.

8.2 Every disciplinary committee must arrive at a decision or judgement within 10 days of the conclusion of taking of evidence.

8.3 At the end of disciplinary proceedings, the chairperson of every disciplinary committee must ensure that the committee deliberates or discusses the evidence, the issues and the questions for decision before making a ruling.

8.4 The decision must be based on the facts proved before the committee or the evidence found to be reliable by the committee.

## **9. The Appeals Process**

9.1.1 Any member aggrieved by the determination, ruling or conduct of proceedings of any lower structure disciplinary committee or ad hoc disciplinary committee shall have the right to appeal to the National Disciplinary Committee within 14 days of the determination in writing through the office of the Secretary General.

9.1.2 The National Disciplinary Committee shall consider and hear any matter or appeal before it by no later than 30 days from the lodging of the appeal.

9.1.3 The National Disciplinary Committee shall have the right of determining any appeal before it on the basis of a written record.